SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 260.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, APPELLANT,

vs.

THE SOUTHERN EXPRESS COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

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1 UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri,

In the Circuit Court of the United States in and for the Eastern District of Missouri.

Be it remembered that, on the 21st day of May, A. D. 1880, at chambers, in the circuit court of the United States in and for the eastern district of Missouri, the following, among other, proceedings were had [and] appear of record, to wit:

Order to Show Cause.

At Chambers.

SOUTHERN EXPRESS COMPANY
vs.
THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY Co. } 1667.

This day comes the complainant, by S. W. Breckenridge,
2 its solicitor, and files its bill of complaint herein.

Whereupon, on motion of said solicitor, it is ordered that a subpœna in chancery issue as in said bill prayed, returnable to rules the first Monday of July next.

Upon the service upon this defendant of the subpœna herein and a copy of the bill, as filed herein, and a copy of this order, let said defendant show cause, at chambers, in the city of St. Louis, on the 27th day of May, 1880, at 11 o'clock A. M., why a provisional or preliminary injunction should not issue herein according to the prayer of the bill in that behalf, and why the plaintiff should not have such other or such further or different relief as to the court then and there may seem meet.

In the meantime, and until the return day of this order, it
3 is ordered that the said defendant, its agents, officers, servants,
and employés, be, and they hereby are, by this order, severally restrained from interfering with or disturbing in any manner the enjoyment by the Southern Express Company of the facilities now accorded to it by the said defendant upon its lines of railway for the transaction of the business of the said Southern Express Company, and of the express business of the public confided to its care, and from interfering with any of the express matter or messengers of the Southern Express Company, and from excluding or ejecting any of its express matter or messengers from the depots, cars, and lines of said defendant, as the same have been heretofore and are now enjoyed and occupied by the said Southern Express Company,
4 and from receiving to receive and transport in like manner,
as the said defendant is now doing, over its lines of railway express matter and messengers of the said Southern Express Company; and from interfering with or disturbing the business of the said Southern Express Company, or its present relations in reference thereto with the said defendant, in any way or manner whatsoever, and from proceeding in any manner to refuse to permit the South-

ern Express Company to continue the transaction of the said business over the lines of the defendant, on the same terms and conditions as are or may be permitted to any other express company or individual for similar business, until the further order of this court.

Said bill is in words and figures following, to wit:

5 In the Circuit Court of the United States for the Eastern District of Missouri.

To the judges of the circuit court of the United States for the eastern district of Missouri:

The Southern Express Company, a corporation created under and pursuant to the laws of the State of Georgia, brings this its bill against the St. Louis, Iron Mountain and Southern Railway Company, a corporation created under and pursuant to the laws of the State of Missouri, and owning and operating a railway in the district aforesaid.

And thereupon your orator complains and says:

I. Your orator, the Southern Express Company, is a corporation duly created, organized, and now existing under the laws of the State of Georgia, for the purpose, and with the powers necessary thereto, of receiving and forwarding upon railroads, steam vessels, and other vehicles of rapid transportation, in a safe and secure manner, and with the greatest practical expedition, in the especial care and custody of its own employés, and at destination personally delivering packages of money or currency, gold and silver bullion, bonds, bank notes, deeds, and other valuable papers, jewels, silks, laces, and other articles of great value, requiring for their security extraordinary care and precaution, and also parcels of goods, wares, and merchandise, requiring great dispatch or careful handling; and also fruit, vegetables, fresh meats, fish, oysters, fish spawn, and other articles liable to decay or other injury from delay; and also live animals requiring particular care and attention during
6 transportation; and also for receiving and forwarding for
collection bills, notes, drafts, and accounts, and receiving and returning payment thereof; and also for receiving and forwarding all articles of trade and commerce, with the bills and charges of the shipper thereto attached, to be collected of the consignee on delivery of such articles, and returned to shipper; and in so doing, to afford the public, under a single contract, and on assured responsibility, safe, reliable, and speedy transportation from and to all points accessible only over two or more railroads, and generally to perform for the public all offices that by usage are incident to the class of carriers now well known, recognized, and designated by the public as "express carriers."

II. Your orator further avers that railroad companies, by reason of the limited extent of their lines and powers, and the extraordinary care and attention demanded, and the peculiar and immense hazard, and other difficulties and embarrassments incident thereto, were not only unwilling, but unable to perform for the public this kind of transportation and service in a manner as efficient and with as responsible assurances of *safety* and *dispatch*, as the necessities and convenience of the public demand, but, by *usage*, have surrendered the same to be performed by express companies, organized and equipped especially therefor, and by long custom and usage, as well as in respect to their lawful right thereto, have accorded to express companies for a reasonable compensation the means and facilities upon their lines for doing this kind of transportation.

III. The express business, first organized in the United States about the year 1839, between Boston and New York, has grown to such dimensions that, extending now over all of the States of the Union and Canadas, and to Europe and the West Indies, it is carried on by over one hundred and sixty different express organizations, meeting the requirements of the public in the localities in which such business is transacted, and occupying therefor, without molestation and with the free permission of the railway companies, nearly every prominent railway line in the United
7 States. Such express companies have, in the aggregate, as your orator is informed and believes, an investment in capital and equipment of over $30,000,000, and such amount, as your orator is also informed and believes, and therefore avers, is not incumbered by mortgage or other lien, and constitutes, at all times, a fund amply sufficient to secure the public against any probable loss of its property while in the custody of the express companies; and which security is not afforded, as your orator is informed and believes, by any railway company in the United States.

IV. All of said express companies, as your orator is informed and believes, have invested their capital and built up their business upon the express understanding with the railway companies that they would voluntarily afford all the facilities needed by the express companies as the representatives of the public for the transaction of its business, or upon the knowledge and belief that the public, whether demanding such facilities in its individual capacity, or through the express companies as its representative, had a legal right to compel the granting thereof by those who had been created by the public and for the public. No railroad company in the United States, to the knowledge of your orator, has ever refused to transport express matter for the public, upon the application of some express company, of some form of legal constitution. Every railway company, so far as your orator is advised, has recognized the right of the public to demand transportation by the railway facilities which the public has permitted to be created, of that class of matter which is known as express matter, and no railway company, to the knowledge of your orator, has ever had the ability to assume, as between itself and the public, such obligations for the transportation of such matter as are universally assumed by the express companies toward all who treat them with frankness.

V. The principal public demand for the existence and use of an express company has been as a medium of exchange of money
8 and the collection of negotiable securities and the transportation of express packages of greater or less value, or of packages the price or value of which was to be collected from the con-

signee at the time of delivery, and remitted to the consignor. The public has always demanded in the transaction of its business of this character, an undoubted financial responsibility on the part of the carrier, known integrity on the part of the employés, and the invention and application of all moral and mechanical safeguards which ingenuity and experience could devise or suggest. It has also required instrumentalities for the primary collection and subsequent delivery of express matter for the relief of the public generally in that regard. This demand has been made with full knowledge on the part of the public of the capacity and responsibility of existing railroad, steamboat, and stage companies, and was, and always has been, a demand for facilities and security, which those companies did not afford.

VI. The Government of the United States, as the representative of the public, has, for the reasons aforesaid, availed itself of the facilities and security afforded by the express companies, to an extent sometimes larger and almost always equaling the demands of the general public. The laws of the United States now in force permit the use of the mails for the transportation of moneys and of many articles which are known as express matter, at what are called "third-class rates," and the railway companies of the country, unless forbidden by their charters, have also instrumentalities for the transportation of moneys and securities from point to point; but neither the Government of the United States nor the public generally have ever used, to any appreciable extent, either the mail or railway facilities for the transmission of such moneys and securities. The express companies have been created by the public, as their instrumentalities for the transmission as well of public as of private moneys, as aforesaid, and the necessity for the existence of such instrumentalities is as great as the necessity for the existence of the ordinary vehicles of commercial intercourse; and in receiving, transmitting, and delivering express matter for the public, the express companies act as the agents of the public, giving that
9 attention to the collection, transmission, and delivery thereof, which neither the public nor the railway companies can give.

VII. Before the commencement of hostilities in the late civil war, the Adams Express Company, a joint stock association, under the laws of the State of New York, was engaged in carrying on the express business in all the southern States, and upon all the principal railroads therein, and was then possessed of a large and valuable equipment necessary for the conduct thereof, and had created and built up for itself a valuable business therein, and had possessed and enjoyed the good will of the public in respect thereto. For controlling reasons of a public character, then generally known, the said Adams Express Company was compelled to withdraw from the said southern territory, and it thereupon, in or about the month of July, 1861, sold and transferred to your orator, the Southern Express Company, its said equipments, business, and good will in the several Southern States, to wit, in Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, and a portion of Tennessee. And thereafter such business was, in the said several States, owned, possessed, enjoyed, and carried on by the said Southern Express Company in the like manner as the same had been theretofore conducted by the said Adams Express Company.

VIII. For the use of the equipment and the enjoyment of the good will aforesaid, the said Southern Express Company, in the conduct of its said business, was afforded all the facilities necessary therefor by all the principal railways in said States, over which the business of the public required the said Southern Express Company to extend its lines. And from time to time the Southern Express Company enlarged and extended its aforesaid business upon and along the lines of the several railroads thereafter built in the territory aforesaid, and, for the dispatch of its business, so extended, provided, at great expense, skillful and faithful servants, safes, and packing chests, peculiarly suited to the safe transportation and
10 storage of money and valuable packages; wagons, horses, and trucks, for collecting, transferring, and making delivery of express matter, and erected at various railroad stations permanent offices and warerooms, and established lines of rapid communication, and fixed and published tariffs of charges between all accessible points in said Southern States; and thence, hitherto having conducted said business for a period of nearly twenty years, it has, at great expense of money and energy, built up in said territory, and now owns and enjoys therein, an express business of great value, and, by its faithfulness to and zeal for the interests of the public, and by the fairness and promptness with which it has performed its obligations, and by the reasonableness of the charges it has always made, it has earned and now enjoys an enviable and widely advertised reputation for responsibility and promptness, and has secured the confidence of the public, and thereby a good-will and commercial standing of great and inestimable value to your orator in the business aforesaid, and all of which constitutes its property.

IX. Your orator would further show that said defendant is duly furnished and equipped with light, durable cars, especially constructed and intended to be attached to their passenger trains, and used for the transportation of express freights, and express messengers in charge thereof, and is also equipped with all other means and facilities necessary to your orator for carrying on its express business as aforesaid.

X. Your orator further avers that heretofore, and on the third day of March, 1851, the St. Louis and Iron Mountain Railroad Company was duly incorporated under and pursuant to the laws of the State of Missouri, and thereafter owned and operated a line of railway from St. Louis, in a southerly direction, extending the same, from time to time, until it reached the boundary line between the States of Arkansas and Missouri aforesaid, and which said line is now owned and operated by the said defendants under the consolidations hereinafter mentioned.

11 XI. And your orator further avers that the said St. Louis and Iron Mountain Railroad Company subsequently, and on

the 30th day of April, 1872, entered into an agreement in writing with the said Adams Express Company, in reference to the transaction by the said express company of the express business over so much of the lines of the said railroad company as were then in operation, and which said contract was in the words and figures following, to wit:

"Memorandum of agreement made the 30th day of April, A. D. 1872, between the St. Louis and Iron Mountain Railroad Company, of the first part, and the Adams Express Company, party of the second part, witnesseth:

The St. Louis and Iron Mountain Railroad Company agree to furnish the said Adams Express Company one-half of the baggage car on each of its passenger trains on main line and branches for carrying express freight; not to be loaded with over seven thousand pounds (7,000) at any one time; and it is further understood that the Express Company shall have the use of part of the baggage car on accommodation trains between St. Louis and Potosie, to an extent not in excess of the amount allowed in passenger trains.

It is understood that each of said cars shall run each way daily on the passenger trains, and no charge shall be made for Sunday, so long as only the night passenger trains are used on Sunday.

It is further agreed by the St. Louis and Iron Mountain Railroad Company, that it will prohibit its conductors, agents, and baggage-masters from transporting on its passenger trains, or from accepting compensation for any matter except extra baggage; and further, the said railroad company agree they will not permit any person or company to do an express business on their passenger trains on any better terms, or for any less payment, than that given the Adams Express Company.

For and in consideration of the service herein named, the said Express Company agree to pay to the St. Louis and Iron Mountain Railroad Company one hundred and twenty-five dollars per day, and a porportional increase per day for every ten (10) miles of road operated by them on extension of road for the transportation of its messengers with safes and packages, chests, and an average amount of freight not exceeding ten thousand pounds (10,000 lbs.) per day, and for all freights in excess of the above amount per day they agree to pay the said railroad company once and a half its regular first-class rates for freight as per freight tariff, but not to exceed
12 seventy-five cents per 100 lbs. for through freight from St.
Louis to Columbus, Kentucky. It is further agreed, that for all extra cars said express company may require the said express company shall pay first-class freight rates for all freight carried in them.

The express company agree to carry all money and other valuables for the said railroad company to and from points on the line of its road free of charge, and for such matter as may be sent to, or received from, points off the line to charge the railroad company not exceeding two-thirds the rate charged the public.

The railroad company to be exempt and indemnified by said express company against all loss or damage to goods or money transported by said express company.

Settlements are to be made on or before the tenth day of each month for the business of the preceding month.

This contract to remain in full force one year from the 1st day of May, 1872, and thereafter until thirty days' notice shall be given by either party to the other of its desire to discontinue the same.

In witness whereof, the president of the St. Louis and Iron Mountain Railroad Company and the superintendent of the Adams Express Company have this day affixed their signatures.

THOS. ALLEN,
Pres. St. L. & I. M. R. R.

XII. And your orator further avers, that in the year 1874 there was existing in the State of Arkansas a railway corporation duly organized under the laws of said State, and known as the Cairo and Fulton Railroad Company, and owning and operating a line of railway between Cairo and Fulton, aforesaid; and also in the State of Missouri a corporation known as the Cairo, Arkansas, and Texas Railroad Company. On the first day of February, 1874, the said Cairo and Fulton Railroad Company, and the said Cairo, Arkansas, and Texas Railroad Company, entered into a contract with your orator in reference to the transaction of the express business over the lines of the said two railways, and which said contract was a continuation or modification of certain contracts theretofore existing with reference to the transaction of the express business over the lines of said railways, and which said contract of the first
13 of February, 1874, was in the words and figures following, to wit:

"Memorandum of agreement made this first day of February, 1874, by and between the Cairo and Fulton Railroad Company, of Arkansas and the Cairo, Arkansas and Texas Railroad Company, of Missouri, as party of the first part, and the Southern Express Company, of Georgia, as party of the second part, witnesseth:

The said party of the first part agrees to furnish the party of the second part one-third of the room in the baggage car on each passenger train over the Cairo and Fulton Road and the Cairo, Arkansas and Texas Road, for the carriage of express matter not to exceed six thousand pounds per day in each car.

It is understood and agreed between the parties hereto, that no conductor, baggage-man, or other railroad agent of said companies shall be allowed to transport on passenger trains (or receive any compensation therefor) any matter except extra baggage. That no other person or express company shall be permitted to do express business or convey matter on passenger trains, on any better terms or for less compensation than those given to, or required of, the party of the second part.

It is further agreed between the parties hereto that the party of the second part will pay to the party of the first part fifty dollars per day for the transportation of its messengers, with safes and package signee at the time of delivery, and remitted to the consignor. The public has always demanded in the transaction of its business of this character, an undoubted financial responsibility on the part of the carrier, known integrity on the part of the employés, and the invention and application of all moral and mechanical safeguards which ingenuity and experience could devise or suggest. It has also required instrumentalities for the primary collection and subsequent delivery of express matter for the relief of the public generally in that regard. This demand has been made with full knowledge on the part of the public of the capacity and responsibility of existing railroad, steamboat, and stage companies, and was, and always has been, a demand for facilities and security, which those companies did not afford.

VI. The Government of the United States, as the representative of the public, has, for the reasons aforesaid, availed itself of the facilities and security afforded by the express companies, to an extent sometimes larger and almost always equaling the demands of the general public. The laws of the United States now in force permit the use of the mails for the transportation of moneys and of many articles which are known as express matter, at what are called "third-class rates," and the railway companies of the country, unless forbidden by their charters, have also instrumentalities for the transportation of moneys and securities from point to point; but neither the Government of the United States nor the public generally have ever used, to any appreciable extent, either the mail or railway facilities for the transmission of such moneys and securities. The express companies have been created by the public, as their instrumentalities for the transmission as well of public as of private moneys, as aforesaid, and the necessity for the existence of such instrumentalities is as great as the necessity for the existence of the ordinary vehicles of commercial intercourse; and in receiving, transmitting, and delivering express matter for the public, the ex-
press companies act as the agents of the public, giving that
9 attention to the collection, transmission, and delivery thereof,
which neither the public nor the railway companies can
give.

VII. Before the commencement of hostilities in the late civil war, the Adams Express Company, a joint stock association, under the laws of the State of New York, was engaged in carrying on the express business in all the southern States, and upon all the principal railroads therein, and was then possessed of a large and valuable equipment necessary for the conduct thereof, and had created and built up for itself a valuable business therein, and had possessed and enjoyed the good will of the public in respect thereto. For controlling reasons of a public character, then generally known, the said Adams Express Company was compelled to withdraw from the said southern territory, and it thereupon, in or about the month of July, 1861, sold and transferred to your orator, the Southern Express Company, its said equipments, business, and good will in the several Southern States, to wit, in Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, and a portion of Tennessee. And thereafter such business was, in the said several States, owned, possessed, enjoyed, and carried on by the said Southern Express Company in the like manner as the same had been theretofore conducted by the said Adams Express Company.

VIII. For the use of the equipment and the enjoyment of the good will aforesaid, the said Southern Express Company, in the conduct of its said business, was afforded all the facilities necessary therefor by all the principal railways in said States, over which the business of the public required the said Southern Express Company to extend its lines. And from time to time the Southern Express Company enlarged and extended its aforesaid business upon and along the lines of the several railroads thereafter built in the territory aforesaid, and, for the dispatch of its business, so extended, provided, at great expense, skillful and faithful servants, safes, and
packing chests, peculiarly suited to the safe transportation and
10 storage of money and valuable packages; wagons, horses, and
trucks, for collecting, transferring, and making delivery of express matter, and erected at various railroad stations permanent offices and warerooms, and established lines of rapid communication, and fixed and published tariffs of charges between all accessible points in said Southern States; and thence, hitherto having conducted said business for a period of nearly twenty years, it has, at great expense of money and energy, built up in said territory, and now owns and enjoys therein, an express business of great value, and, by its faithfulness to and zeal for the interests of the public, and by the fairness and promptness with which it has performed its obligations, and by the reasonableness of the charges it has always made, it has earned and now enjoys an enviable and widely advertised reputation for responsibility and promptness, and has secured the confidence of the public, and thereby a good-will and commercial standing of great and inestimable value to your orator in the business aforesaid, and all of which constitutes its property.

IX. Your orator would further show that said defendant is duly furnished and equipped with light, durable cars, especially constructed and intended to be attached to their passenger trains, and used for the transportation of express freights, and express messengers in charge thereof, and is also equipped with all other means and facilities necessary to your orator for carrying on its express business as aforesaid.

X. Your orator further avers that heretofore, and on the third day of March, 1851, the St. Louis and Iron Mountain Railroad Company was duly incorporated under and pursuant to the laws of the State of Missouri, and thereafter owned and operated a line of railway from St. Louis, in a southerly direction, extending the same, from time to time, until it reached the boundary line between the States of Arkansas and Missouri aforesaid, and which said line is now owned and operated by the said defendants under the consolidations hereinafter mentioned.

11 XI. And your orator further avers that the said St. Louis
and Iron Mountain Railroad Company subsequently, and on

the 30th day of April, 1872, entered into an agreement in writing with the said Adams Express Company, in reference to the transaction by the said express company of the express business over so much of the lines of the said railroad company as were then in operation, and which said contract was in the words and figures following, to wit:

"Memorandum of agreement made the 30th day of April, A. D. 1872, between the St. Louis and Iron Mountain Railroad Company, of the first part, and the Adams Express Company, party of the second part, witnesseth:

The St. Louis and Iron Mountain Railroad Company agree to furnish the said Adams Express Company one-half of the baggage car on each of its passenger trains on main line and branches for carrying express freight; not to be loaded with over seven thousand pounds (7,000) at any one time; and it is further understood that the Express Company shall have the use of part of the baggage car on accommodation trains between St. Louis and Potosie, to an extent not in excess of the amount allowed in passenger trains.

It is understood that each of said cars shall run each way daily on the passenger trains, and no charge shall be made for Sunday, so long as only the night passenger trains are used on Sunday.

It is further agreed by the St. Louis and Iron Mountain Railroad Company, that it will prohibit its conductors, agents, and baggagemasters from transporting on its passenger trains, or from accepting compensation for any matter except extra baggage; and further, the said railroad company agree they will not permit any person or company to do an express business on their passenger trains on any better terms, or for any less payment, than that given the Adams Express Company.

For and in consideration of the service herein named, the said Express Company agree to pay to the St. Louis and Iron Mountain Railroad Company one hundred and twenty-five dollars per day, and a porportional increase per day for every ten (10) miles of road operated by them on extension of road for the transportation of its messengers with safes and packages, chests, and an average amount of freight not exceeding ten thousand pounds (10,000 lbs.) per day, and for all freights in excess of the above amount per day they agree to pay the said railroad company once and a half its regular first-class rates for freight as per freight tariff, but not to exceed
12 seventy-five cents per 100 lbs. for through freight from St.
Louis to Columbus, Kentucky. It is further agreed, that for all extra cars said express company may require the said express company shall pay first-class freight rates for all freight carried in them.

The express company agree to carry all money and other valuables for the said railroad company to and from points on the line of its road free of charge, and for such matter as may be sent to, or received from, points off the line to charge the railroad company not exceeding two-thirds the rate charged the public.

The railroad company to be exempt and indemnified by said express company against all loss or damage to goods or money transported by said express company.

Settlements are to be made on or before the tenth day of each month for the business of the preceding month.

This contract to remain in full force one year from the 1st day of May, 1872, and thereafter until thirty days' notice shall be given by either party to the other of its desire to discontinue the same.

In witness whereof, the president of the St. Louis and Iron Mountain Railroad Company and the superintendent of the Adams Express Company have this day affixed their signatures.

THOS. ALLEN,
Pres. St. L. & I. M. R. R.

XII. And your orator further avers, that in the year 1874 there was existing in the State of Arkansas a railway corporation duly organized under the laws of said State, and known as the Cairo and Fulton Railroad Company, and owning and operating a line of railway between Cairo and Fulton, aforesaid; and also in the State of Missouri a corporation known as the Cairo, Arkansas, and Texas Railroad Company. On the first day of February, 1874, the said Cairo and Fulton Railroad Company, and the said Cairo, Arkansas, and Texas Railroad Company, entered into a contract with your orator in reference to the transaction of the express business over the lines of the said two railways, and which said contract was a continuation or modification of certain contracts theretofore existing with reference to the transaction of the express business over the
lines of said railways, and which said contract of the first
13 of February, 1874, was in the words and figures following,
to wit:

"Memorandum of agreement made this first day of February, 1874, by and between the Cairo and Fulton Railroad Company, of Arkansas and the Cairo, Arkansas and Texas Railroad Company, of Missouri, as party of the first part, and the Southern Express Company, of Georgia, as party of the second part, witnesseth:

The said party of the first part agrees to furnish the party of the second part one-third of the room in the baggage car on each passenger train over the Cairo and Fulton Road and the Cairo, Arkansas and Texas Road, for the carriage of express matter not to exceed six thousand pounds per day in each car.

It is understood and agreed between the parties hereto, that no conductor, baggage-man, or other railroad agent of said companies shall be allowed to transport on passenger trains (or receive any compensation therefor) any matter except extra baggage. That no other person or express company shall be permitted to do express business or convey matter on passenger trains, on any better terms or for less compensation than those given to, or required of, the party of the second part.

It is further agreed between the parties hereto that the party of the second part will pay to the party of the first part fifty dollars per day for the transportation of its messengers, with safes and package chests, and an average amount of express matter not to exceed six thousand pounds per car over the Cairo and Fulton railroad, and ten dollars per day for similar privileges and accommodation over the Cairo, Arkansas and Texas Railroad Company, it being understood that payment for service on the latter road shall commence when the express company shall place its messengers thereon. For all express matter carried in excess of 6,000 pounds on any one train, the same shall be charged 25 cents per hundred pounds per hundred miles, any excess matter carried less than one hundred miles shall be charged for as for one hundred miles.

It is further understood and agreed between the parties hereto that the express company is to carry all money packages and valuables for the railroad companies herein named to and from points on the line of said road free of charge. It is understood that where the parties to this agreement employ one and the same person as joint
agent, the receipt of the express messenger on the train for
14 such money packages, etc., alone shall constitute a delivery
to the party of the second part, and the receipt of the party
to whom such packages are addressed shall in such cases be necessary to constitute a delivery to the party of the first part.

For such express as may be sent to or received from points off the line of the roads named herein the express company is to charge not exceeding two-thirds of the rate it would charge the public. The railroad company is to be exempt from, and the express company shall indemnify it against all loss and damage to goods or money transported by said express company.

When, by reason of accident or other cause, the railroad companies, or either of same, are unable to provide the facilities herein agreed to be furnished each day, then no charge shall be made against the express company for such non-service.

The car-room allotted to the express company is to be lighted and warmed by the railroad-companies.

In cases where the agent of the railroad companies is employed by the express company as its agent, and it is practicable, the depots of the party of the first part may be used free of charge by the party of the second part, and room or space will be accorded on the right of way or premises of the railroad companies free of charge for the express company to erect offices thereon.

Settlements under this contract are to be made by the express company on or before the 10th day of each month for the business of the preceding month.

The express company will be entitled to one messenger on each train, and the officers of the express company traveling on its business will be carried free of charge. This contract to remain in force until terminated by either party giving the other sixty days' notice of its intention to thus withdraw therefrom.

In witness whereof, the president of the C. & F. and the C., A. & T. R. R. Companies, and the general superintendent of the Southern

Express Company, have hereunto set their hands the day and year aforesaid.

(Signed) M. J. O'BRIEN,
For Southern Exp. Co.
(Signed) THOS. ALLEN,
For C. & F. R. R. Co.
(Signed) THOS. ALLEN,
For C. A. & T. R. R. Co."

XIII. Your orator further avers that the said St. Louis and
15 Iron Mountain Railroad Company and the said Cairo and
Fulton Railroad Company, and the said Cairo, Arkansas and Texas Railroad Company were duly, and according to law, consolidated on the 16th day of May, 1874, under and by the name of St. Louis, Iron Mountain and Southern Railway Company, the defendant herein, and thereafter conducted, and are now conducting and operating, a line of railway between the cities of St. Louis and Cairo aforesaid, and Fulton aforesaid, and Texarkana, on the boundary line between the States of Texas and Arkansas aforesaid.

XIV. Your orator further avers that the said Adams Express Company and the said Southern Express Company continued, after the said consolidation, severally to enjoy all the rights, privileges, and facilities granted by the two contracts aforesaid, and until on or about the first day of April, 1878, when the said Adams Express Company, with the assent and permission of the said defendant, relinquished to the said Southern Express Company the transaction of the express business over so much of the lines of the said defendant as had been embraced in its contract of the 30th of April, 1872, with the Adams Express Company, hereinbefore set forth, and thereafter the entire express business over the lines of the said defendant's railway has been and is now daily conducted by the said Southern Express Company.

XV. Your orator further avers that, for the transportation of its express matter over the lines of the defendant and of its predecessors, the Southern Express Company has paid the sum of $505,761.89, a large portion of which was paid to said railway company for the transportation of express matter not local to the defendant's line, but going to or coming from points beyond the termini of defendant's railroad, and mostly to or from other States of the Union; and your orator avers, upon information and belief, that the said Adams Express Company, during the existence of its relations with the the said defendant, paid to it a proportionate amount for similar express service.

XVI. Relying upon the duty and obligations imposed
16 upon said railway company by law, and the conditions of its
enjoyments of its franchises, as well as by the contract aforesaid, to afford to your orator for a reasonable compensation equal and indiscriminate opportunities and facilities of transportation of the kind, and to be enjoyed in the manner demanded by the convenience and necessities of the public, and established by the usage and custom of said railroad company, and all other railroad com-

panies in like cases, your orator made large investments of money in building up its business at said stations and along and upon said railroad, and in establishing other and connecting routes for business to be transported beyond the lines of said railroad, and in advertising the same to the public; and by such investment, and its energies expended through a long time to secure to the public the facilities of safe and rapid dispatch to any and all places, and to itself the confidence and patronage of the public, it has built up, and now owns and enjoys, an express business and prestige and good-will thereto, upon said line, of great value to your orator, by reason of the tolls and profits thereby accruing to your orator.

XVII. Being thus organized and established in the said Southern States, after the close of the war, the Southern Express Company entered into an arrangement, now in force, with the Adams Express Company for the general regulation of the transportation of property daily coming from the territory of the one into the territory of the other, and by which property received by the Adams Express Company destined for points within the territory of the Southern, and property received within the territory of the Southern destined to points within the territory of the Adams Express Company, or reached by its connections, is daily interchanged at certain specified points, and upon a basis of charge proportioned to the distance traversed in the territory of either. In case of such interchange of express matter within such territory, the express company originally receiving the same remains liable to the public for the value thereof until delivered to the consignee.

17 XVIII. Since the said understanding and arrangement, the Southern Express Company has made such interchanges with the said Adams Express Company, and now makes the same daily at Richmond, Lynchburg, and Norfolk, Virginia; Chattanooga, Tennessee; Cairo, Illinois; Paducah, Kentucky; and St. Louis, Missouri; and has not, itself, since then, either delivered or received express matter north of such points, but the territory south thereof has been operated by the said Southern Express Company alone. By this arrangement, the said express companies have been enabled to extend to the public the advantages and facilities of a continuous and most speedy line of transportation for express matter through the several States in which the said companies carry on their business, and, by the aid of other responsible express companies, throughout the entire United States, under a single bill of lading, assuring the safe delivery of such express matter over all the connecting lines upon which it is carried to its destination.

XIX. The said Southern Express Company now owns and controls an express business properly and most expeditiously to be conducted over the said defendant's railway sufficient to guarantee to the said defendant tolls or earnings in the future as great or greater than those heretofore paid it as aforesaid, to the like pecuniary benfit of the defendant, as it has heretofore received.

XX. Your orator further avers, that according to the usages and business of express companies, your orator has provided wagons and horses, drivers, iron safes, and other conveniences with which it collects and delivers on the trains of defendant express matter, using its own means, agencies, and appliances alone about the same, until the same is actually delivered on the defendant's trains; and likewise using solely its own means and agencies in transporting and delivering such freight after they leave defendant's trains.

XXI. And your orator further avers that it frequently has occasion
to forward over defendant's line large sums of money, for which
18 the defendant, having its property heavily mortgaged to se-
cure existing debts, affords no adequate or prompt security
or indemnity in case of loss; and so the safety of your orator and the defendant, as well as their convenience, has demanded, and the defendant, according to the usages of railroad traffic in such cases, has accorded the means and facilities to your orator of forwarding such sums of money in the special care and custody of your orator's own agents; and otherwise your orator would be practically denied the opportunities of safe transportation of said sums of money over defendant's line, intended, by the creation of the defendant, as a common carrier for the public, to be afforded to the public. The defendant's railway is mortgaged, as your orator is imformed and believes, to the extent of over $30,000,000.

XXII. Your orator further avers that its interest, and the preservation of its valuable property and good-will demands that it shall continue to have and enjoy the daily means and facilities aforesaid heretofore by the defendant accorded as aforesaid; and for the use and enjoyment thereof your orator is always ready and hereby offers to pay such just and reasonable compensation, and to conform to such just and reasonable rules and regulations as may be lawfully required and imposed by the defendant. Your orator is advised and believes, and therefore charges, that by reason of the premises hereinbefore recited, and by force of the general statutes of the State of Missouri in such case made and provided, and to which reference is hereby had, the duty is now imposed upon the defendant to always afford to your orator, as one of the public, the means and facilities upon its railway, of forwarding and transporting, in the manner established as aforesaid by the usage of the express business, upon reasonable terms and under reasonable regulations, its express matter and messengers.

XXIII. And your orator further avers, upon information and belief, that, within a short time, certain persons have sought and obtained from the legislature, or under the authority of the laws of the State of Arkansas, a charter or other incorporating act for a new express company, called "The Mississippi Valley Express Company,"
and have perfected the organization of an express company
19 thereunder; and that such organization was suggested and
promoted by parties interested in the said defendant's com-
pany, and for the purpose of favoring the same on the lines of the said defendant's railway, and to the exclusion therefrom of the said Southern Express Company, and to the total destruction of its business thereon, and of its property therein.

XXIV. And your orator further avers that the first information which it had of the formation of said new company, and of the intent of the promoters thereof to destroy the business of the said Southern Express Company, was contained in a letter sent by the said defendant to the said Southern Express Company, in words and figures following, to wit:

"St. Louis, Iron Mountain and Southern Railway,
General Superintedent's Office,
St. Louis, *March* 26, 1880.

M. J. O'Brien, Esq.,
General Superintendent Southern Express Company, Memphis, Tenn.:

Dear Sir: This company has come to the conclusion that it is to its interest to terminate the contract made with you on February 1, 1874, and have directed me to give you the notice contemplated in said contract, which will terminate the same sixty days from this date. Other arrangements have been made, and, if desirable to you, can turn it over at an earlier date.

Personally, I regret to sever the pleasant relations existing for many years with yourself and officers, and hope for a continuance of the same between yourselves and your successors.

Very truly,
A. W. SOPER,
General Superintendent.

XXV. Your orator caused the said letter to be answered in the words and figures following, to wit:

"Southern Express Company, (Express Forwarders),
Office of the General Superintendent,
Savannah, *April* 1, 1880.

A. W. Soper, *General Superintendent St. Louis, Iron Mountain and Southern R. R., St. Louis, Mo.:*

Dear Sir: Yours of the 26th ultimo, directed to Memphis, 20 Tennessee, reached me here this morning, and I must confess that in view of the pleasant business relations, which have existed between our respective companies for several years, I am surprised at the notice proposing to terminate the same.

I will thank you to inform me what other arrangements have been made, which, in the judgment of your company, rendered dissolution with ours necessary, and would also ask whether the same terms and privileges which may be accorded to others can not be extended to this company, so as to permit the continuation of its business on your lines.

I expect to be in Nashville on or about the 5th instant, and will be gratified to have your reply directed to that point.

Reciprocating the personal regard which you are pleased to express, I am, respectfully,

M. J. O'BRIEN,
General Superintendent."

XXVI. Your orater further avers that it received a telegraphic reply to its said letter, in the words and figures following, to wit:

"St. Louis, *April* 5, 1880.

M. J. O'Brien, *General Superintendent Southern Express Company:*

Your letter just received. The contract has been made with other parties, exclusive, same as your own was.

A. W. SOPER."

XXVII. And your orator further avers, upon information and belief, and therefore charges that, by the "other parties" referred to in said correspondence, the said defendant referred to the said Mississippi Valley Express Company, and that the said defendant heretofore made a contract with the said Mississippi Valley Express Company in writing, whereby it agreed to give to the said Mississippi Valley Express Company, for a definite period, an exclusive right to have, enjoy, and possess all the means, facilities, and accommodations necessary for the transacting of express business, and for the transportation of express matter over the railway lines of the said defendant, and therein covenanted and agreed not to grant over its railway to the public generally, or to any person, firms, or corporation, other than the said Mississippi Valley Express Company for 21 said period, any facilities, upon equal or any terms, for the transaction of such business on its lines; and that the defendant intended, and until as hereinafter stated, in accordance with said agreement and covenant, to exclude and eject the Southern Express Company, its messengers, and business from the lines of said railway, on the 25th day of May instant, and thereafter to deny and refuse to the Southern Express Company the means and facilities of doing said business.

XXVIII. And your orator further avers that in order to obviate the necessity for any litigation in the premises, and to secure by amicable means a proper recognition of the rights of the said Southern Express Company, your orator, on the 13th April, 1880, caused to be addressed and sent to the said defendant a letter in the words and figures following, to wit:

"St. Louis, *April* 13, 1880.

Hon. Thomas A. Allen,
President St. Louis, Iron Mountain and
Southern Railway Company, St. Louis, Mo.

Dear Sir: I received, under date of March 26th ultimo, a letter (which was promptly acknowledged) from Mr. A. W. Soper, general superintendent, referring to the contract existing between this company and yours, and saying that he had been directed to give us notice that the same would terminate sixty (60) days from the date of his communication, alleging as a reason therefor that "other arrangements had been made."

Recalling the circumstances attending the origin of relations between our respective companies, you will remember that for two or more years previous thereto the express business was conducted by the Iron Mountain Railroad Company on its own account, and then (doubtless for good and sufficient reasons) the privilege was accorded to our company under an arrangement effected by you and myself.

This agreement obligated us to purchase the express property then owned by your company, which we did. It also stipulated the terms upon which we were permitted to conduct the business, and further that no other person or company would be permitted to do an express business on your road on any better terms, or for any less payment, than that given us. We continued under same for several years, during which time the revenues therefrom were insufficient to pay the expenses of operating the line; but, stimulated by the prospective growth of the country through which it
22 passed, and the proposed extension of your road, we persevered, and, by diligent effort, succeeded in inducing to your route a class of through business which it had not previously enjoyed; and, furthermore, we assisted in every possible way to encourage and promote the traffic in various products of the region along the route of the Iron Mountain road; and it is only of late that we have had any encouragement to hope for compensation for our outlay and efforts, involving considerable time, labor, and expenditure of money.

In the opinion of officers of your own, as well as those of railroads in Texas, it was thought that a separate agency of this company should be established in St. Louis, as it might be the means of securing business between this point and Texas, which was, at the time, supposed to be seeking other channels. Our company at once yielded to this wish, and has since maintained an office here at considerable expense, for the representation and interest of your line.

It is believed that the service we have rendered the public has always proved entirely satisfactory, and, so far as known, no complaint has ever emanated from yourself or other officers of your road as to the conduct of the same.

In view of all these circumstances, I am surprised at this notice proposing to terminate our business relations, and in bringing the matter to the attention of yourself and board of directors, officially, it is with the hope that no other arrangements will be consummated which will exclude our company from your line, and, therefore, have to ask your favorable consideration of this, our application, for a continuation of present, or such other, facilities as may be in your power to accord, and upon terms and conditions you may see fit to grant any other person or persons.

Asking an early response, I am respectfully,

M. J. O'BRIEN,
General Superintendent.

XXIX. And your orator further avers that in furtherance of the purpose to give the said Mississippi Valley Express Company the exclusive enjoyment of the privileges aforesaid, and to terminate all the rights of your orator under the other contract hereinbefore set forth in reference thereto, the said defendant, on the 23d day of April, 1880, sent to the said Adams Express Company a letter in the words and figures following, to wit:

23 "St. Louis, Iron Mountain and Southern Railway,
General Superintendent's Office,
St. Louis, *April* 23, 1880.

J. H. Rhodes, Esq., *Sup't Adams Epxress Co., Cincinnati, O.*

Dear Sir: This company has decided that it is to its interest to terminate the contract made with you April 30, 1872, and has directed me to give you the notice contemplated in said contract, which will terminate the same thirty days from April 26th.

Yours, truly,
(Signed) A. W. SOPER, *Gen'l Sup't.*"

XXX. And your orator further avers that on the 30th day of April, 1880, it received from the said defendant a further communication in the words and figures following, to wit.

"St. Louis, *April* 30, 1880.

M. J. O'Brien, Esq., *Gen. Sup't Southern Express Co.*

Dear Sir: In giving you notice I named sixty days from March 26th.

Mr. Allen desires me to write you, asking if you will be ready to turn over the line to the new company sooner than May 26th.

Yours, truly, A. W. SOPER, *Gen. Sup't.*"

To which, on the 3rd day of May, it returned an answer in the words and figures following, to wit:

"Memphis, *May* 3, 1880.

A. W. Soper, Esq., *General Superintendent St. Louis. Iron Mountain and Southern Railway, St. Louis, Mo.*

Dear Sir: I am this morning in receipt of your favor of the 30th ultimo, referring to your notice terminating, on May 26th, the business arrangement existing between our respective companies; and further, asking if this company 'will be ready to turn over the line to the new company sooner than May 26th.'

Responding to your inquiry, will suggest that our continuation on the road ought not to hinder or interfere with the proposed operations of any other similar organization to whom it may be the pleasure of your company to accord equal privileges.

Respectfully,
W. J. O'BRIEN,
General Superintendent."

24 And that on or about the 5th of May, instant, it received an answer to its said letter of the 13th of April, above set forth, in the words and figures following, to wit:

engaged in the State of Kentucky, on the line of the Louisville, Cincinnati and Lexinton Railway Company, and in the State of Indiana over the line of railway known as the Louisville, New Albany and Chicago Railway.

XXXV. And your orator further avers that in or about the month of July, 1879, the Louisville and Nashville Railway Company, of the State of Kentucky, revived an act passed by the Legislature of that State, on or about the 3d day of June, 1865, entitled "An act to incorporate the Union Express Company," and caused to be organized thereunder a corporation known as the Union Express Company, and thereafter gave or caused to be given to your orator, and to the said Adams Express Company, and by and on behalf of 27 each of the four railway companies in the preceding paragraph mentioned, a notice in substance, to the effect that your orator and the said Adams Express Company must, on or before a given day, and either on the 20th of April or the 10th of May instant, withdraw its business and messengers from the said railway lines of the said four companies, because and for the reason by each of said four companies then severally assigned in writing, that it had made an exclusive contract with the said Union Express Company for the future transportation of the express business over its line, and that thereafter the previous facilities and accommodations afforded *to* your orator and the said Adams Express Company would be withdrawn.

XXXVI. Your orator further avers that your orator and the said Adams Express Company were severally advised that neither of the said four railway companies could lawfully make an exclusive contract of the nature aforesaid with the said Union Express Company, or lawfully eject your orator or the said Adams Express Company from the lines of the said railways, and that, in order to maintain and protect the rights of your orator and the said Adams Express Company in the premises, your orator commenced suit in the circuit court of the United States for the district of Alabama, against the said Mobile and Montgomery Railway Company, and a like suit in the same court for the middle district of Tennessee, against the said Nashville, Chattanooga and St. Louis Railway Company; and the said Adams Express Company commenced a like suit in the same court for the district of Kentucky, against the Louisville, Cincinnati and Lexington Railway Company, and also a like suit in the same court for the district of Indiana, against the Louisville, New Albany and Chicago Railway Company; and that the plaintiffs in each of said suits severally procured therein, *ex parte*, an order restraining each of the said four railway companies from interfering in any manner with the express business of your orator, or of the said Adams Express Company, and each of which said orders was procured and served before the said tenth day of May, instant, and before the day on which the said two ex- 28 press companies had been notified to withdraw from the lines of the said railways, and a copy of which said order, as granted in the suit against the said Louisville, New Albany and Chicago Railway Company, is hereto annexed, marked "Schedule A."

XXXVII. And your orator further avers that the fact that a restraining order had been so as aforesaid granted, became and was publicly known, and subsequently became and was known to the defendant.

XXXVIII. And your orator further avers, as it is informed and believes, that on the return day of the order, so as aforesaid issued against the said Louisville, Cincinnati and Lexington Railway Company, an application was made to the court on behalf of the defendant therein for a postponement of the argument thereof, and that a discussion was then and there had, in the course of which it was announced by the court that, in its opinion, the contention of the plaintiff in the said suit was well founded; that it was entitled to the relief whith it prayed, and that the said court had jurisdiction to award the same, and thereupon said postponement was granted.

XXXIX. Your orator further avers, upon information and belief, that the substance of the opinion so expressed by the said court was communicated to the said defendant, and that thereupon the said defendant met in conference, at Louisville, the representatives of the said Louisville and Nashville Railway Company, and of the said four other railway companies, and then and there confederated together for the purpose of destroying, so far as they could, the express business of your orator and of the said Adams Express Company, and for that purpose did agree that they would severally terminate their alleged exclusive contracts with the said Mississippi Valley and the said Union Express Companies, and would themselves thereafter effect the desired result by assuming an exclusive right to conduct the express business over their several lines of railway, and would not thereafter accord to either your orator or
29 to the said Adams Express Company the facilities and accommodations theretofore granted to them severally, but would exclude therefrom and would refuse to transmit the express matter of the said two companies, except upon condition of their surrendering the custody thereof and of paying such express rates or charges as the said railway companies might severally see fit to adopt.

XL. And your orator further avers, as it is informed and believes, that on the 17th day of May, inst., the said restraining order against the said Louisville, New Albany and Chicago Railway Company came on for hearing, at Indianapolis, before the Honorable Associate Justice Harlan, of the Supreme Court of the United States, and that thereupon the defendant railway company, in pursuance of the said combination and agreement, advised the said court that it had canceled the said contract with the said Union Express Company, and that it proposed thereafter to conduct its own express business over its said line of railway, and to thereafter exclude the said Adams Express Company therefrom, and thereupon the said court made an order in the premises, of which a copy is hereto annexed, marked "Schedule B."

XLI. And your orator further avers that the said defendant, in pursuance of the combination and agreement aforesaid, abandoned its alliance with the said Mississippi Valley Express Company, and thereafter, and on the 15th day of May instant, gave to your orator, and also, in substance, to the said Adams Express Company, a notice in the words and figures following, to wit:

"St. Louis, Mo., *May* 15, 1880.

H. C. Fisher, Esq., *Div. Supt. Southern Express Co.*

Sir: As by notice heretofore given you, the contract made with the Southern Express Company, under date of February 1, 1874, will terminate on the 26th inst. The St. Louis, Iron Mountain and Southern Railway Company has determined to transport all express matter and transact all express business on its own account, and through and by its own officers and agents, on and after the first day of June next, in its own cars and on and over its own roads.

We shall be glad to receive, transport, and deliver any
30 express matter you and your company may think proper to intrust to us.

Very truly, THOS. ALLEN, *President.*"

XLII. And your orator further avers, as it is informed and believes, that it is the attention of the said defendant, on the said first day of June next, to exclude your orator, its express safes and messengers, from its said railway lines, and to refuse to accord to your orator thereafter any facilities or accommodations therefor, such as it has heretofore and for years past daily accorded, and that such exclusion will take place unless restrained by the order of the court, and that, if the same so take place, the express business of your orator over the lines of the said defendant's railway will not only be irreparably injured, but will absolutely be destroyed; that its customers and patrons will be lost to it; that its good-will, property, and investment will be rendered worthless; that its ability to keep its contract with other railway and express companies will be terminated, and that its usefulness to the public, as its servant, would be destroyed.

XLIII. And your orator further avers, as it is informed and believes, that the defendant has no legal right to exclude your orator from its railway lines, but that it is its legal duty to continue to afford to your orator, upon its passenger trains and at its depots and stations, the same facilities which it has heretofore accorded, or which it may hereafter afford to itself; and that, under the laws of the State of Missouri, the said defendant has no lawful power to arrogate to itself the exclusive right of conducting the express business over its said lines of railway, or to exclude other express companies from participating therein, or to charge such other express companies such express rates as the said defendant may see fit to adopt; that by said laws the said defendant, and every railroad corporation in said State, is required to give public notice of the regular time of starting and running its cars, and to furnish sufficient accommodations for the transportation of all such passengers, baggage,

mails, and express freight as shall, within a reasonable time
31 previous thereto, be offered for transportation at the place of
starting, and also to stop all trains carrying passengers at the junction or intersection of other railroads, a sufficient length of time to allow the transfer of passengers, personal baggage, mails, and express freight from the trains of railroads so connecting or intersecting, and are compellable to receive all passengers and express freight from such connecting or intersecting roads whenever the same shall be delivered to them, and to take, transport, and deliver the same without unnecessary delay, and for such charges and without any discrimination, whether they transport such freight in their own name or in the name of another, and for such toll or compensation therefor as is specifically provided by law, or by the railroad commissioners appointed by law, and annually to transmit to said commissioners a report, under oath, showing, among other things, what express companies run on their roads, and on what terms and conditions, and the kind of business done by them.

XLIV. And your orator further avers that it is now daily engaged in the transaction of its express business over the lines of the Memphis and Little Rock R. R., the Hot Springs R. R., and the Little Rock and Fort Smith R. R., and which are connecting or intersecting railroads with the said defendant's railway, and over all of which your orator has been constantly in the habit of transporting express matter destined for points on the line of the said defendant's railway.

XLV. And your orator further avers that the said railroad companies have classified railway freight according to law, and that the rates of toll or compensation thereof have been provided by law, and that the same cannot be lawfully exceeded by the said defendant in its charges to your orator or to the public whom your orator represents.

XLVI. And your orator further avers, as it has hereinbefore averred, that it is now in the daily custom of making with its own
horses and wagons, which it now possesses, and under drivers,
32 for whose fidelity it is responsible, all the collections and de-
liveries of express freight as between the public and the railway lines of the said defendant, which the public cannot conveniently make on its own behalf, and that it does not require from the said defendant any similar service, nor, as it is advised and believes, can the said defendant lawfully charge it therefor.

XLVII. And your orator further avers that, in order to ascertain what interpretation said defendant intended to place on its communication to your orator of the 15th of May, as aforesaid, upon the words "we shall be glad to receive, transport, and deliver any express matter you and your company may think proper to intrust to us," your orator, on or about the 19th day of May instant, inquired of the said defendant what rates of toll or compensation the said defendant intended to charge your orator for the future conduct of its business, and that your orator was informed by the said defendant that the said defendant would not convey on the trains conveying passengers, baggage, and mails the express matter of your orator, either at the published tariff rates of the said defendant or at the rates prescribed by said railroad commissioners, and that the defendant's tariff of express rates had not yet been fixed, and that before the same would be furnished to your orator said defendant desired to know what your orator intended to do in reference to the future conduct of its business over the said defendant's railway.

XLVIII. And your orator further avers, as it is advised and believes, and therefore charges, that it is lawfully entitled to demand and to receive from the said defendant the same facilities and accommodations for transacting the express business over the lines of the said defendant's railway as may be accorded by the said defendant to itself; and that it will be entitled to have all its express matter transported over the lines of the said defendant railway at the rates of freight or toll specifically provided by law and by the charter of the said defendant, and by the said railroad commissioners, and upon the same trains, and with like accommodation
thereon, and at depots and stations, as the said defendant
33 may accord to itself in the transportation of such express
matter as it may carry; and that in any event, if the said defendant shall, during the pendency of this suit, or hereafter, undertake to do and do its own express business, the said defendant can be legally required to deduct, from the charges to be made by it to the public for the transportation of express matter, upon all express matter transported by it for the said Southern Express Company, a just and reasonable compensation for the accessorial service rendered by the said Southern Express Company, beyond and off the lines of railway of the said defendant, in the collection of goods from shippers or consignors, and the delivery of goods to consignees, by means of horses and wagons, and which accessorial service the said Southern Express Company does not require or need at the hands of the said defendant, but is now performing and rendering for itself, as is hereinbefore set forth.

XLIX. This plaintiff further, in the event that the said defendant, during the pendency of this suit, undertakes to conduct, and does conduct, for itself, the express business over its said lines of railway, hereby offers to comply with all the proper rules and regulations of the said defendant in reference to the conduct of said business, and is willing and ready, and hereby offers, to pay all the reasonable freight or tolls which the said defendant railway company may lawfully demand for the transportation of express matter as aforesaid.

L. And your orator further says, that the said Southern Express Company is now in the possession of the good-will of its customers, and is daily occupied in the conduct of its business over the lines of the said defendant's railway, and that it will be greatly injurious to the business of the said Southern Express Company if said company shall be ejected or excluded from the lines of the defendant's railway, even in the event of the said defendant's undertaking hereafter to conduct it own express business, and that there is no legal or
practical necessity for any exclusion of the said express com-
34 pany from the lines of railway of the said defendant, the said
express company being willing, as aforesaid, to conform to

all proper rules and regulations of the said defendant, and offering to pay, as it hereby does, all the reasonable freights or tolls which the said defendant railway company may lawfully demand under its charter for services to be rendered to the said company in the transportation of its express matter, as aforesaid.

LI. And your orator further avers, as it has hereinbefore averred, that it has now the same and as great need and neccessity, as the representative of the public, as it ever had, for the daily use and enjoyment of express privileges and accommodations over the defendant's said railway lines, and that successive actions at law, to be brought upon daily tenders of express matter to the said defendants, and its daily refusals to transport the same, would involve your orator in a multiplicity of litigations, which it has not the ability to institute or prosecute on every occasion and in every county when and where such tenders and refusals should take place; and that such litigations would be valueless in point of recovery to the said Southern Express Company, and would not protect its right on behalf of the public to have its express matter carried on lawful terms; and that such exclusion and ejectment, if it is permitted to take place, will not present the case of a single and temporary disturbance of the business of the Southern Express Company, but from its very nature will constitute a permanent, perpetual, and irreparable injury thereto, and the entire loss within the localities designated of its good-will, business, reputation, and property therein, and would, within the same localities, permanently prevent it from accomplishing for the public the specific objects for which the said Southern Express Company was organized and perfected; and that the said Southern Express Company is remediless in the premises, at and by the course of the common law, and that the common law does not and can not afford so adequate and perfect a remedy herein as it is within the jurisdiction and province of a court of equity to afford.

35 LII. And your orator further says, as it is advised and believes, that the said defendant is a public corporation and a common carrier under the charter and laws aforesaid, and exercises thereunder a public office for the public good, and that as such it is amenable to the jurisdiction of a court of equity, and that such courts are always open and ready to exercise their powers for the purpose of compelling such corporations and common carriers to keep within the limits which the legislature has thought proper to prescribe for the exercise of their powers, and not to exercise powers beyond those which their acts of incorporation confer; and to proceed by injunction to prevent illegal injury or destruction to the rights or property of others, and to prevent illegal exclusion from the enjoyment of public rights; and to protect all such rights in their fullest extent against all and every injury thereto; and that this court has power to protect the said Southern Express Company in the premises, and to compel the said defendant to accord to your orator all its legal rights in this behalf.

Wherefore, your orator prays—

1. That during the pendency of this suit the said defendant, its

officers, agents, servants, and employés, may be restrained and enjoined by a proper preliminary or provisional order or injunction, and until the further order of the court, from interfering in any manner with or disturbing in any manner the enjoyment by the Southern Express Company of the facilities now accorded to it by the said defendant, upon its lines of railway for the transaction of the business of the said Southern Express Company, and of the express business of the public confided to its care; and from interfering with any of the express matter or messengers of the Southern Express Company; and from excluding or ejecting any of its express matter or messengers from the depots, cars, and lines of the said defendant, as the same have been heretofore, and are now enjoyed and occupied by the said Southern Express Company; and from refusing to receive and transport, in like manner as the 36 said defendant is now doing, over its lines of railway, the express matter and messengers of the said Southern Express Company; and from interfering with or disturbing the business of the said Southern Express Company, or its present relations, in reference thereto, with the said defendant in any way or manner whatsoever, and so long as the said Southern Express Company shall be willing and ready, and offer to pay, according to all legal rates therefor.

2. That if any dispute or diragreement shall arise between the parties hereto during the pendency of this suit, and before a final decree herein upon the question of what is a lawful or reasonable compensation to be paid by your orator to the defendant for the transportation of express matter, your orator may be permitted to bring the same by way of interlocutory application to this court for its decision, and that, pending the inquiry thereon, the preliminary injunction heretofore prayed may be continued to the same purport, tenor, and effect as if the prayer for the same were here repeated.

3. That the said defendant may be decreed by this court to transport at all times the express matter, safes, and messengers of the said Southern Express Company by the same trains and with the same accommodations thereon, and in its depots and stations as it may transport its own express matter or as it may accord to itself; and that the said defendant may be decreed so to transport the said express matter, safes, and messengers of the said Southern Express Company, at and for the statutory tolls and compensation in that behalf by law provided; and that the said defendant may be decreed to make a reasonable rebate or reduction to be fixed and determined by this honorable court, from its charges to the said Southern Express Company by reason of its performance of said accessorial service, as above specified, so long as the said Southern Express Company shall offer to conform to all the reasonable rules and regulations of the said defendant, and to pay all lawful charges for the transaction of its said business.

37 4. That a permanent injunction may issue herein to the same purport and effect as is hereinbefore prayed in regard to said provisional or preliminary injunction.

5. That your orator may have such other relief or such further

or different relief herein, with its costs, as to the court may seem meet.

To the end, therefore, that the said defendant may, if it can, show why your orator should not have the relief hereby prayed, and may, under its corporate seal, and according to the best and utmost of its knowledge, remembrance, information and belief, full, true, direct, and perfect answer make to each and all of the matters and things in this bill of complaint contained, and that as fully and particularly as if the same were here repeated paragraph by paragraph, and it were specially interrogated thereunto severally, may it please your honors to grant unto your orator a writ of *subpœna ad respondendum*, issuing out of and under the seal of this honorable court, to be directed to the said defendant, the St. Louis, Iron Mountain and Southern Railway Company, commanding it on a certain day, and under certain penalties, to be therein inserted, to appear before your honors in this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises; and, further, to stand to, perform, and abide by such further order or decree herein as to your honors shall seem meet; and, also, a writ of provisional and writ of perpetual injunction to the same tenor, purport, and effect, as is hereinbefore set forth and prayed.

And your orator will ever pray, etc.

THE SOUTHERN EXPRESS COMPANY.

S. M. BRECKINRIDGE,
C. A. SEWARD,
F. E. WHITFIELD,
Of Counsel and Solicitors for Plaintiff.
S. M. BRECKINRIDGE,
Sol. for Comp't.

38 UNITED STATES OF AMERICA, *District of Missouri*, } *ss*:

On this, the 21st day of May, eighteen hundred and eighty, appeared H. C. Fisher, to me known, who, being by me duly sworn, on oath says that he is the superintendent for the complainant in the foregoing bill, and has especial control of the complainant's business in the States of Missouri and Arkansas, and as such is most fully advised of the matters in said bill, and that he has read the foregoing bill and knows the contents thereof, and that the same is true, except as to the matter therein stated on information and belief, and as to that matter he believes the same to be true.

H. C. FISHER.

Subscribed and sworn to before me, this 21st day of May, 1880.

A. P. SELBY,
U. S. Comm'r E. D. Mo.

39 SCHEDULE A.

Circuit Court of the United States, District of Indiana.

WILLIAM B. DINSMORE, as President of the Adams Express Company, and a Shareholder therein,

vs.

THE LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY.

Upon the service upon this defendant of the subpœna herein, and a copy of the bill as filed herein, and of the affidavit of Alfred Gaither, thereto annexed, and of a copy of this order, let said defendant show cause before me, at ———, on the —— day of ———, 1880, at —— o'clock —. m., why a provisional or preliminary injunction should not issue herein according to the prayer of the bill in that behalf, and why the plaintiff should not have such other or such further or different relief as to the court then and there may seem meet.

40 In the meantime, and until the return day of this order, it is ordered that the said defendant, its agents, officers, servants, and employés be, and they hereby are, by this order, severally restrained from interfering with, or disturbing in any manner, the enjoyment by the Adams Express Company of the facilities now accorded to it by the said defendant upon its lines of railway for the transaction of the business of the said Adams Express Company, and of the express business of the public confided to its care; and from interfering with any of the express matter or messengers of the Adams Express Company, and from excluding or ejecting any of its express matter or messengers from the depots, cars, and lines of said defendant, as the same have been heretofore, and are now, enjoyed and occupied by the said Adams Express Company, and from refusing to receive and transport in like manner, as the said defendant is now doing, over its lines of railway, express matter and messengers of the said Adams Express Company; and from interfering with or disturbing the business of the said Adams Express Company, or its present relations in reference thereto with the said defendant, in any way or manner whatsoever, and from proceeding in any manner, on or after the 20th day of April, instant, to refuse to permit the said Adams Express Company to continue the transaction of the said business over the lines of the defendant on the same terms and conditions as are or may be permitted to any other express company or individual for similar business.

Dated May —, 1880.

41 SCHEDULE B.

United States Circuit Court for the District of Indiana.

WILLIAM B. DINSMORE, as President of the Adams Express Company, and a shareholder therein,

vs.

THE LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY.

No. 6895. In Equity.

Come now the parties by their solicitors and attorneys, and as

heretofore ordered, the defendant is required to show cause why a provisional and *and* preliminary injunction shall not be made and issue herein according to the prayer of the bill of complaint in that behalf; and the court having heard the argument
42 of the solicitors and counsel of the parties, and being sufficiently advised, does order, adjudge, and decree that, until the further order of the court on the final hearing of this cause, the defendant, its agents, officers, servants, and employees be, and they hereby are, severally restrained from interfering with or disturbing in any manner the enjoyment by the Adams Express Company of the facilities now accorded to it by the defendant upon its lines of railway for the transaction of the business of the said Adams Express Company, and of the express business by the public confided to it; that the defendants shall receive for transportation the express matter and messengers of the Adams Express Company at all its depots and stations, and transport the same to destination without molestation or hindrance, upon the same terms as to compen-
43 sation for freight or passage money, and by the same train that it receives and transports express matter and messengers for any other express company, or for any other part or portion of the public; and it is adjudged and decreed that the said defendant has no lawful right to make any contract of any kind with any person, firm, or corporation whereby it shall grant any rights, privileges, accommodations, or facilities over its lines of railway, which will prevent the said defendant from granting the same or equal rights, privileges, accommodations, and facilities to the Adams Express Company, or to any other portion of the public desiring to have, occupy, enjoy, and possess the same, upon the same and equal terms as are offered by or afforded to any other person, firm, or corporation.

44 And the defendant is forbidden to interfere with any of the express matter or messengers of the Adams Express Company, and from excluding or ejecting any of its express matter or messengers from the depots, cars, and lines of said defendant; and from refusing to receive and transport over its lines of railway express matter and messengers of the said Adams Express Company; and from interfering with or disturbing the business of the said Adams Express Company, or its present relations in reference thereto with the said defendant, or preventing the transaction of its business over the lines of the defendant on the same terms and conditions as are or may be permitted to any other express company or individual for similar business; nor to charge for the same in excess of what is reasonable compensation with liberty to the
45 parties to make such further application herein to the court as they may be advised is necessary to fix what is and shall be a reasonable compensation, or for any other matter growing out of the case. In the event of a dispute between the parties pending the preparation of this cause, as to what is reasonable compensation for the services performed by the defendant company for complainant, such difference shall be referred to the court after due notice, and pending such reference the complainant shall not be disturbed

by the defendant company in the transaction of express business over its line, upon reasonable terms as to compensation, and otherwise.

This order shall not conclude either party upon the final hearing as to any question upon the merits which may be disclosed 46 by the pleadings or the testimony; its object being only to preserve the present status until the case is prepared for decree.

47 Upon filing said bill there issued a subpœna in chancery, which, with the marshal's return thereon, is in words and figures following, to wit:

Subpœna in Chancery.

UNITED STATES OF AMERICA, } *sct.:*
Eastern District of Missouri,

In the Circuit Court of the United States in and for said District.

The President of the United States of America to the St. Louis, Iron Mountain and Southern Railway Company, a corporation, Greeting:

You are hereby commanded to be and and appear at rules to be held at the office of the clerk of the circuit court of the United States in and for the eastern district of Missouri on the first Monday of July next, at the city of St. Louis, then and there to answer the bill of complaint of the Southern Express Company, a corporation, and citizen of the State of Georgia, filed against you on the 21st day of May, 1880; hereof fail not.

48 Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 22nd day of May, 1880.

Issued at office, in the city of St. Louis, under the seal of said circuit court, the day and the year last aforesaid.

[SEAL.] M. M. PRICE, *Clerk*
By A. P. SELBY, *Deputy.*

MEM.—The defendant to enter its appearance in this suit in the clerk's office, on or before the day at which the writ is returnable; otherwise the bill may be taken *pro confesso.*

M. M. PRICE, *Clerk.*
By A. P. SELBY, *Deputy.*

UNITED STATES OF AMERICA, } *sct.:*
Eastern District of Missouri,

49 I have executed this writ by delivering a copy thereof, together with a copy of the bill in equity in said cause, thereto attached, to Thomas Allen, president of the within-named St. Louis, Iron Mountain and Southern Railway Company, at St. Louis, in said district, on the 22nd day of May, 1880.

H. W. LEFFINGWELL,
United States Marshal Eastern District of Missouri.
By JAMES B. GEGGIE, *Deputy.*

50 And afterwards, to wit, on the 1st day of June, A. D. 1880, the following further proceedings were had, and appear of record in said cause, to wit:

Injunction Order.

At Chambers.

SOUTHERN EXPRESS COMPANY
vs.
ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO. } 1667.

The motion of the complainant for a preliminary injunction herein, according to the prayer of the bill, having been brought on to be heard, and the parties being present by their counsel, and the court having duly considered the questions presented, after argument for the defendant, as well as for plaintiff, doth hereby order that the defendant, its officers, agents, servants, and employees
51 be enjoined and restrained, until the final determination of this cause, from preventing the plaintiff from enjoying the same facilities in the conduct of its express business permitted to any other express company, or exercised by the defendant itself, on payment by plaintiff of reasonable compensation therefor.

52 And afterwards, to wit: on the 21st day of July, A. D., 1880, the following further proceedings were had, and appear of record in said cause, to wit:

SOUTHERN EXPRESS COMPANY, Complainant,
vs.
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Defendant. } 1667.

Now, comes defendant, and, by consent, files its answer to the bill of complaint herein.

Said answer is, in words and figures, following, to wit:

53 *Answer of the Defendant to Complainant's Bill of Complaint.*

In the United States Circuit Court for the Eastern District of Missouri. In equity.

THE SOUTHERN EXPRESS COMPANY, Complainant,
vs.
THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILROAD COMPANY, Defendant.

1. This defendant, now and at all times hereafter, saving to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering, says: It does not know and can-

not set forth as to its belief or otherwise, whether the said Southern Express Company is a corporation, duly created, organized, and now existing under the laws of the State of Georgia, for the purpose of doing a general express business, or the business of express carriers, and with the powers enumerated in the first paragraph of complainant's bill.

54 2. Defendant denies, as charged in second paragraph of complainant's bill, that railroad companies, by reason of the limited extent of their lines and powers, and the extraordinary care and attention demanded, and the peculiar and immense hazard, were unwilling to perform for the public the kind of transportation and service known as the express business, in a manner as efficient and with as responsible assurances of safety and dispatch as the necessities and conveniences of the public demand, and denies that by usage said railroad companies have surrendered the said business to be performed by express companies, and by long usage and custom, as well as in respect to their lawful right thereto, have accorded to express companies, for a reasonable compensation, the means and facilities upon their lines for doing this kind of transportation.

3. Defendant, as to the statements contained in the third paragraph of complainant's bill of complaint, says it does not know and cannot set forth as to its belief or otherwise, whether the amount of investment in capital and equipment of the express companies in the United States is over $30,000,000, and whether the said amount is not encumbered by mortgage or other lien, and constitutes at all times a fund sufficient to secure the public against any probable loss of its property while in the custody of said express companies.

Defendant denies that security, as ample and complete as that furnished by the said express companies, is not or cannot be afforded by any railroad company in the United States.

4. Defendant, as to the statements contained in paragraph four of complainant's bill, denies that said express companies have invested their capital and built up their business upon the express understanding with the railway companies that they would
55 voluntarily afford all facilities needed by the said express companies,
as the representatives of the public for the transaction of their business, or upon the knowledge and belief that the public, whether demanding such facilities in its individual capacity, or through the express companies as its representative, had a legal right to compel the granting thereof by those who had been created by the public, and for the public. Defendant denies that no railway company has ever had the ability to assume as between itself and the public such obligations for the transportation of such express matter as are universally assumed by the express companies towards all who treat them with frankness.

5. Defendant, as to the statements contained in paragraph five of complainant's bill of complaint, denies that there has been any public demand for the existence and use of an express company as a medium of exchange of money and the collection of negotiable

securities and the transportation of express packages of greater or less value, or of packages, the price or value of which was to be collected from the consignee at the time of delivery and remitted to the consignor.

6. As to the statements contained in paragraph six of complainant's bill of complaint, defendant denies that express companies have been created by the public as their instrumentalities for the transmission of public as well as of private moneys, and that the necessity for the existence of such instrumentalities is as great as the necessity of the ordinary vehicles of commercial intercourse; denies that in receiving, transmitting, and delivering express matter for the public, the express companies act as the agents of the public, giving that attention to the collection, transmission, and delivery thereof which neither the public nor the railroad companies can give.

56 7. As to the statements contained in paragraph seven of complainant's bill of complaint, defendant says it does not know, and can not set forth as to its belief or otherwise whether the same are true or not.

8. Defendant, as to the statements contained in paragraph eight of complainant's bill of complaint in relation to the equipment and enjoyment of the good-will of the Adams Express Company by the said complainant in the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, and a portion of Tennessee during and since the late civil war, and in relation to the extension and enlargement of complainant's business, and the mode and manner of its conduct of its business therein, and its reputation and standing, and the extent and value of its business therein, says it does not know and can not set forth as to its belief or otherwise whether the same as alleged are true or not.

9. Defendant says as to the statements contained in paragraphs 9, 10, 11, 12 and 13 of complainant's bill of complaint, that the same are true.

10. Defendant as to the statements contained in paragraph fourteen of complainant's bill of complaint, admits that the Adams Express Company and said complainant continued severally to enjoy, after the said consolidation of defendant's predecessors into the said St. Louis, Iron Mountain & Southern Railway Co., on the fifteenth day of May, 1874, all the rights, privileges, and facilities granted by the two contracts set out in paragraphs eleven and twelve of complainant's bill of complaint until on or about the first day of April, 1878; admits that at said last-mentioned date the said Adams Express Company, with the assent and permission of defendant, relinquished to the said complainant the transaction of the express
57 business over so much of the lines of defendant as had been
embraced in its contract of the thirtieth of April, 1872, with the said Adams Express Company, set out in paragraph eleven of complainant's bill of complaint.

11. Defendant, as to the statements contained in paragraph fifteen of complainant's bill of complaint, denies that, for the transportation

of its express matter over the lines of the defendant and of its predecessors, the said complainant has paid the sum of $505,761.89, or any amount approximating thereto; denies that a large portion of said amount was paid to said defendant and its predecessors for the transportation of express matter not local over defendant's line, but going to or coming from points beyond the termini of defendant's railroad, and mostly to or from other States of the Union. Said defendant further denies that the said Adams Express Company, during the existence of its relations with defendant, paid to it a proportionate amount for similar express service.

12. Defendant, as to the statements contained in paragraph sixteen of complainant's bill of complaint, denies that complainant, relying upon the duty and obligations imposed upon said railroad company by law, and the conditions of the enjoyment of its franchises, as well as by the contract made with defendant and its predecessors to afford to the complainant, for a reasonable compensation, equal and indiscriminate opportunities and facilities of transportation of the kind, and to be enjoyed in the manner demanded by the convenience and necessities of the public, and established by the usage and custom of defendant, and all other railroad companies in like cases, made large investments of money in building up its business at stations and along and upon said railroad, and in advertising the same to the public. Denies that by such investments and its energies
58 expended through a long time to secure to the public the facilities of safe and rapid dispatch to any and all places, and to itself the confidence and patronage of the public, it has built, and now owns and enjoys, an express business, and prestige and goodwill thereto, upon defendant's line, of great value to the complainant, by reason of the tolls and profits thereby accruing to complainant.

13. Defendant, as to the statements contained in paragraphs seventeen and eighteen of complainant's bill of complaint, in relation to the alleged arrangement entered into by complainant with the said Adams Express Company, for the general regulation of the transportation of property daily coming from the territory of the one into the territory of the other, and in relation to the interchanges made by said complainant with the said Adams Express Company, of express matter at various places in the Southern States, and in relation to the effect and advantages of such an arrangement and of such interchanges to the public, says that it does not know, and cannot set forth as to its belief or otherwise, whether or not the said statements are true.

14. Defendant, as to the statements contained in paragraph nineteen of complainant's bill of complaint, denies that the said complainant now owns and controls an express business properly and most expeditiously to be conducted over defendant's railway sufficient to guarantee to the said defendant tolls or earnings in the future as great, or greater, than those paid it as before stated, to the like pecuniary benefit of the defendant, as it has heretofore received.

15. As to the statements contained in paragraph twenty of com-

plainant's bill of complaint, defendant says that, for the purposes of this suit, it admits the same to be true.

59 16. Defendant, as to the statements contained in paragraph twenty-one of complainant's bill of complaint, admits that complainant frequently has had occasion to forward over defendant's line large sums of money, but denies that defendant, having its property heavily mortgaged to secure existing debts, affords no adequate or prompt security or indemnity in case of loss therefor. Denies that the safety of complainant and defendant, as well as their convenience has demanded, and that defendant according to the usage of railroad traffic in such cases, has accorded the means and facilities to complainant of forwarding such sums of money in the special care and custody of complainant's own agents. Denies that otherwise complainant would be practically denied the opportunities of safe transportation of said sums of money over defendant's line, intended by the creation of defendant as a common carrier for the public to be afforded to the public.

17. Defendant, as to the statements contained in paragraph twenty-two of complainant's bill of complaint, denies that the interests of complainant and the preservation of its valuable property and good-will demand that it shall continue to have and enjoy the daily means and facilities heretofore accorded to it by defendant; denies that complainant for the use and enjoyment thereof has always been ready to pay such just and reasonable compensation, and to conform to such just and reasonable rules and regulations as may be lawfully required and imposed by defendants. Defendant denies that by reason of the fact of complainant being afforded the facilities accorded to it under the contract aforesaid over defendant's lines, and by force of the statute of the State of Missouri, the duty is imposed upon defendant to always afford to complainant the means and facilities upon its railway of forwarding and transporting in the manner aforesaid by the usage of the express business, upon
60 reasonable terms and regulations, its express matter and messengers.

18. Defendant, as to the statements contained in paragraph twenty-three of complainant's bill of complaint, denies that within a short time before the filing of the bill herein, or at any other time, certain persons have sought and obtained from the Legislature, or under the authority of the laws of the State of Arkansas, a charter or other incorporating act for a new express company, called the "Mississippi Valley Express Company," and have perfected the organization of an express company thereunder; denies that any such express company was ever organized under the laws of the State of Arkansas or otherwise.

19. Defendant, as to the statements contained in paragraphs 24, 25, and 26 of the complainant's bill of complaint, admits that the letters and telegrams therein contained are genuine and are correctly set out.

20. As to the statement contained in paragraph twenty-eight of complainant's bill of complaint, admits that the letter set out therein

was sent to and received by defendant at or about the time stated therein.

21. Defendant, as to the statements contained in paragraphs 29 and 30 of complainant's bill of complaint, admits the letters therein set out to be true and sent and received as therein stated, but denies that the letter referred to and set out in paragraph twenty-nine was sent to the said Adams Express Company in furtherance of the purpose of giving to the said Mississippi Valley Express Company the exclusive enjoyment of the privileges accorded to the said Adams Express Company, under the contract of April 30, 1872, set out in pargraph eleven of complainant's bill of complaint, and admits that said letter was sent for the purpose of terminating the rights of the complainant under said contract, which it claims to have acquired as the successor and assignee of the said Adams Express Company. 61

22. As to the statements contained in paragraphs thirty-one and thirty-two of complainant's bill, defendant admits the same to be true.

23. Defendant, as to the statements contained in paragraphs thirty-four, thirty-five and thirty-six of complainant's bill in relation to the transaction of express business by complainant in the States of Alabama and Tennessee, and by the said Adams Express Company in the State of Kentucky, and in relation to the organization of a corporation called the "Union Express Company" by the Louisville and National Railroad Company and to the giving of a notice to complainant and said Adams Express Company by certain railroad companies therein named to withdraw their business and messengers from the lines of said railroad companies, and in relation to the reasons therefor, and in relation to the institution of suits by complainant and the said Adams Express Company against certain railroad companies therein named for the protection of the rights of complainant and the said Adams Express Company and the procuring of restraining orders in said suits against the said railroad companies, and the nature and purport of said orders, says it does not know and can not set forth its belief or otherwise whether the same are true.

24. As to the statements contained in paragraph thirty-nine of said complainant's bill, defendant denies that said defendant met in conference at Louisville or elsewhere the representatives of the said Louisville & Nashville Railway Company and of the said four other railway companies mentioned in paragraph thirty-four of complainant's bill of complaint, and then and there confederated together for the purpose of destroying, so far as they could, the express business of complainant and of the said Adams Express Company; denies that they, for that purpose or any purpose, did agree that they would severally terminate their exclusive contracts with the said Mississippi Valley and said Union Express Companies, and would themselves thereafter effect the desired result by assuming an exclusive right to conduct the express business over their several lines of railway, and would not thereafter accord to either complainant or to the said Adams Express Company the facilities and accommodations theretofore granted to them severally, but would 62

exclude therefrom and refuse to transmit the express matter of the said two companies, except upon condition of their surrendering the custody thereof and of paying such express rates or charges as the said railway companies might severally see fit to adopt.

25. As to the statements contained in paragraph forty-one of complainant's bill, defendant admits the giving of the notice therein set out to complainant and to the said Adams Express Company, but denies that such notice was given in pursuance of any combination and agreement by and between the defendant and the representatives of the said railroad companies mentioned in paragraph thirty-nine of complainant's bill.

26. Defendant, as to the statements contained in paragraph forty-three of complainant's bill, denies that it is the duty of defendant to continue to afford to complainant upon its passenger trains and at its depots and stations the same facilities which it has heretofore accorded or which it may hereafter accord to itself; denies that under the laws of the State of Missouri the defendant has no lawful power to arrogate to itself the exclusive right of conducting the express business over its lines of railway, or to exclude other express
63 companies from participating therein, or to charge such other express companies such express rates as said defendant may see fit to adopt; denies that defendant by the laws of said State of Missouri is compellable to receive all passengers and express freight from connecting or intersecting roads whenever the same shall be delivered to it, and to take, transport and deliver the same without unnecessary delay, and for such charges and without any discrimination whether it shall transport such freight in its own name or in the name of another, and for such toll or compensation therefor as is specifically provided by law or by the railroad commissioners appointed by law, and annually to transmit to said commissioners a report under oath showing, among other things, what express companies ran on its road, and on what terms and conditions, and the kind of business done by them.

27. As to the statements contained in paragraph forty-five of complainant's bill, defendant admits that the railroad companies have classified railway freight, and that the rate of toll or compensation therefor has been provided by law, but denies that the same cannot be lawfully exceeded by the defendant in its charges to complainant or to the public.

28. As to the statements contained in paragraph forty-six of complainant's bill, defendant denies that the complainant is in the daily custom of making with its own horses and wagons all the collections and deliveries of express freight as between the public and the railway lines of defendant, which the public cannot conveniently make on its own behalf; denies that the public does not require from defendant any similar service, and that the defendant cannot lawfully charge it therefor.

64 29. Defendant, as to the statements contained in paragraph forty-seven of complainant's bill, denies that in answer to the inquiry of complainant on or about the fifteenth day of May, 1880, as to the interpretation defendant intended to place on its commu-

nication to complainant of about said time, defendant informed complainant that said defendant would not convey on the trains conveying passengers, baggage, and mails, the express matter of complainant, either at the published tariff rates of said defendant, or at the rates prescribed by said railroad commissioners, and that defendant's tariff or express rates had not been fixed; and that before the same would be furnished to complainant, said defendant desired to know what complainant intended to do in reference to the future conduct of its business over defendant's railway.

30. As to the statements contained in paragraph forty-eight in complainant's bill, defendant denies that complainant is entitled to demand and receive from defendant the same facilities and accommodations for transacting the express business over the lines of defendant's railway as may be accorded by said defendant to itself. Denies that it is entitled to have all its express matter transported over the lines of the defendant's railway, at the rates of freight or toll specifically provided by law, and by the charter of defendant, and by the said railroad commissioners, and upon the same tracks and with like accommodation thereon, and at depots and stations as the defendant may accord to itself in the transportation of such express matter as it may carry. Denies that defendant in doing its own express business can be lawfully required to deduct from the charges to be made by it to the public for the transportation of express matter, upon all express matter transported by it for the said Southern Express Company, a just and reasonable compensation for the accessorial service rendered by the Southern Express
65 Company beyond and off the lines of railway of defendant, in the collection of goods from shippers or consignors, and the delivery of goods to consignees by means of horses and wagons.

31. Defendant states that under its charter of incorporation, which was duly granted under and pursuant to the laws of the State of Missouri on the third day of March, 1851, it is authorized to transport passengers, goods, wares, and merchandise of all kinds, and also all kinds of lumber, produce, and other articles usually transported on railroads, and to charge and receive such tolls and freights for transportation of persons and commodities on said road or any parts thereof, as shall be to the interest of the same, and that the directors of the defendant are therein authorized to establish such tolls and to alter the same from time to time.

32. Defendant further avers that while it has always claimed the right under the provisions of its said charter to transport what is usually called express matter, and to do a general express business upon and over its own lines, for reasons satisfactory at the time it made the contracts set out in paragraphs eleven and twelve in complainant's bill, under and by virtue of which the said Adams Express Company and the said Southern Express Company in its own right, and as the successor of the said Adams Express Company, transacted the said express business over the lines of the defendant until about the first day of June, 1880, when the said contracts were terminated by notice duly given in accordance with the terms and provisions of said contracts.

33. Defendant further avers that since the said first day of June, 1880, the defendant has formed and organized what is known as the "Express Department of the St. Louis, Iron Mountain & 66 Southern Railway Company," and has been, and is now, receiving, transporting over its lines and delivering freight commonly known as express freight, and is now doing a general express business on its own lines.

34. Defendant avers that the express business as transacted by the said Southern Express Company is as much the legitimate business of defendant as any other traffic transported over its lines, and that there is no more need or reason for the intervention of the said complainant between the St. Louis, Iron Mountain & Southern Railway Company and its customers than there is for its intervention in the transportation of lumber or passengers; that it is manifestly unjust to the stockholders of defendant to permit a third party like the Southern Express Company to make use of the property of defendant and the services of defendant's employees to carry away a considerable annual profit from the transportation of freight.

35. Defendant further avers that many railroad companies in the United States, some of them for years past, have been transporting all such freight as is usually known as express matter, and have been, and are now, transacting over their lines what is commonly denominated a general express business with as much dispatch and promptness, in as safe and secure a manner, and with greater satisfaction to the public, as the defendant is informed and believes, than the said express companies have been or are now doing.

36. Defendant further avers that the compensation it has received from said complainant for the transportation of its traffic over its lines during the time of the existence and operation of the said contracts before referred to was insufficient and afforded no adequate pecuniary benefit to defendant, and that the conduct of com- 67 plainant in the management and transaction of its business over the lines of defendant, its intervention between defendant and its customers, its retention of the services of the station and freight clerks of defendant, its discrimination in favor of itself by causing the transfer of a large amount of freight to itself that should have been properly carried by defendant, its wilful and continued violations of said contracts, under and by virtue of which it was permitted to do the said express business over the lines of defendant's road, by the concealment and withholding of correct and true reports of the weights of the express freights transported daily by it over defendant's lines, occasioned great damage to defendant and compelled the termination of said contracts by defendant.

37. Defendant further avers that it has been informed and believes that complainant is only entitled to demand of defendant as a common carrier the same rights and privileges in the manner and rates of and for the transportation of its express freight that any other shipper or consignor has; that its rights in the transportation of its express matter spring from the duty of defendant as a common carrier to the public, and that defendant owes to complainant no other duty than it owes to any other person; that defendant is willing and

always has been willing to transport all the freight or express matter of complainant at reasonable rates, and to give to complainant the same facilities and privileges that it grants to any other express company, or to any other person in like circumstances.

38. Defendant further avers that it does not claim and never has claimed a right to exclude the transportation of the express matter of the complainant from the lines of defendant's railway, and has always been willing and is now willing to carry and transport any freight or express matter of complainant that it may offer to defendant. 68 Defendant claims the right to carry and transport what is called express matter in the spaces in its express cars selected by itself, and under the supervision, care, and control of its own employees, and has refused and does refuse to complainant the right to have allotted to itself any particular space in defendant's express cars for its exclusive use, or to permit its messengers to ride in the express cars and to take charge of complainant's express freight.

39. Defendant further avers that whatever expenditure complainant has made in building up its business at the stations and along the lines of defendant, and establishing other and connecting routes for business to be transported beyond the lines of defendant's railroad, has been made by complainant solely in reliance upon the contracts above referred to, and with the knowledge that the same were terminable upon thirty and sixty days' notice. Defendant further avers that the amount expended by complainant in reference to its business along the lines of defendant's railway is inconsiderable, not exceeding in the aggregate $10,000.

40. This defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said bill charged without this, that there is any other matter, cause or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge or belief of this defendant.

All of which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

69, 70 43. And this defendant submits to this honorable court that the complainant has not on its bill shown any case in equity or case entitling it to proceed against defendant in this honorable court, and the defendant prays all such benefit as if it had demurred to the said bill.

THOROUGHMAN & PIKE,
Solicitors for Defendant.

71 And afterwards, to wit, on the 17th day of August, A. D. 1880, the following further proceedings were had, and appear of record in said cause, to wit:

Order to Take Testimony.

SOUTHERN EXPRESS COMPANY, Complainant,
vs.
ST. LOUIS, IRON MOUNTAN AND SOUTHERN RAILWAY CO., *et al.*, Defendants.
1667.

On application of complainant, this day made before M. M. Price, clerk of this court, (Honorables George W. McCrary and Samuel Treat, judges, being absent,) it is ordered that Joseph Gutman, junior, of the city of New York, and State of New York, and H. R. Probasco, of the city of Cincinnati, and State of Ohio, be, and they are hereby, appointed special examiners to take testimony herein, on behalf of complainant, in said cities of New York and
72 Cincinnati, respectively. It is further ordered that the taking of testimony herein before said Gutman be begun on Tuesday, August 24th, 1880, at office, 29 Nassau street, New York city, and continued from day to day until finished, and that notice hereof be served on defendants or solicitors of record.

73 And afterwards to wit, on the 3rd day of September, A. D. 1880, the following further proceedings were had, and appear of record in said cause, to wit:

SOUTHERN EXPRESS COMPANY, Complainants,
vs.
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY CO., Defendant.
1667.

Now comes the complainant, and by consent files replication to the answer herein.

Said replication is in words and figures following, to wit:

74 Circuit Court of the United States, for the Eastern District of Missouri. In equity.

THE SOUTHERN EXPRESS COMPANY
vs.
THE ST. LOUIS, IRON MOUNTAIN and SOUTHERN RAILWAY COMPANY.

The replication, of the Southern Express Co., complainant, to the answer of the St. Louis, Iron M. & S. R'y Co., the defendant.

This repliant, saving and reserving to itself now, and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer for replication thereunto, says that it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient, in the law to be answered unto, and that the said answer of
75 said defendant is uncertain, untrue, and insufficient, to be replied unto by this repliant; without this, that any other matter or thing whatsoever, in the said answer contained, material, or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true, all which matters and things this repliant is and

will be ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

BLATCHFORD, SEWARD, GRISWOLD & DA COSTA,
Solicitors for Complainant.

F. E. WHITFIELD,
S. M. BRECKENRIDGE,
Sol. for Comp.

76 And afterwards, to wit, on the 15th day of October, A. D. 1880, the following further proceedings were had and appear of record in said cause, to wit:

Rule to Show Cause.

SOUTHERN EXPRESS COMPANY, Complainant,
vs.
ST. LOUIS, IRON MOUNTAIN and SOUTHERN RAILWAY Co., Defendant.
} 1667.

Now comes complainant by its solicitors, and files its petition for a modification of the injunction order herein, which being seen and heard by the court, it is ordered that a rule go against the St. Louis, Iron Mountain and Southern Railway Company, returnable Monday, October 25, 1880, to show cause why the prayer of the plaintiff's petition should not be granted. It is further ordered by the court that the matter of said petition be heard at that day.

77 Said petition is in words and figures following, to wit:

Petition for Modification of Order.

In the Circuit Court of the United States for the Eastern District of the State of Missouri.

THE SOUTHERN EXPRESS COMPANY
vs.
THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

To the circuit court of the United States for the eastern district of Missouri:

The petition of the Southern Express respectfully represents:

1. This suit was commenced in May last. The defendant has answered herein and issue has been joined thereon. By stipulation between the parties the larger portion of the evidence on the part of your petitioner for final hearing has been taken, and your petitioner is proceeding to complete its testimony for such hearing. Your petitioner refers to said pleadings:

2. On the first day of June, 1880, this court granted an injunction herein, according to the prayer of the bill in that behalf, and which was granted in open court, after oral argument, and of which the defendant had due notice, and said injunction yet and now remains in full force. 78

3. Said court in granting the said injunction intended, as your petitioner is advised and believes, and therefore charges, to secure to your petitioner the full enjoyment of all needful express facilities over the line of the said defendant's railway, as your petitioner had therefore enjoyed the same, or as the said petitioner was then enjoying or might thereafter enjoy the same.

4. The facilities then being enjoyed by your petitioner consist in free access to the vehicles containing express matter to the stations and cars of the said defendant, the transportation thereof in the custody of messengers, and when necessary, in safes and pack-
79 ing trunks or chests in baggage cars and by passenger trains,
and in the collection, unless prepaid, of the express charges due thereon from consignees thereof at the time and place of delivery thereof, and in the payment to the defendant by your petitioner of the amounts due from it for such facilities according to the terms of the contract in said bill set forth, to wit: "On or before the tenth day of each month for the business of the preceding month."

5. Under the terms of the contracts set out in said bill, your petitioner, at the time of the commencement of this suit, was paying to the said defendant the sum of one hundred and ninety-five dollars per day as and for its compensation for express services rendered up to a certain limit of pounds of freight per day. In the first of said contracts with the said defendant, any excess of weight over and above the limited amount of ten thousand pounds was to be
80 paid for at one and a half of the regular first-class freight
rates of the defendant as established by its freight tariff.

Under the second of said contracts with the Cairo and Fulton railroad and the Cairo, Arkansas and Texas railroad, both now constituting part of the defendant's line, any excess of weight over and above the limited amount of six thousand pounds on any one train, was to be paid for at the rate of twenty-five cents per hundred pounds per hundred miles. Your petitioner paid in accordance with the terms of said contracts, both as to daily amounts and as to charges on freight in excess of the limited amounts, according to the terms of said contracts, and until this suit was commenced. Your petitioner avers that said rates were fixed and determined by the then railroad company's parties to the contracts, and were an ade-
81 quate compensation for the services rendered thereunder dur-
ing the eight or six years during which the said two contracts were respectively in existence.

6. Your petitioner further avers that since the granting of the said injunction the said defendant has undertaken, and is now constantly and persistently endeavoring, to defeat the same, and to prevent your petitioner from realizing any beneficial effect or protection therefrom, and to defeat the intention of the court in the issuance thereof, and to deprive your petitioner of the use of the express facilities aforesaid, or of any beneficial or profitable enjoyment thereof. Your petitioner charges that since the granting of said injunction its spirit and *interest* have been violated and defeated by the said dedendant, and your petitioner has been thereby virtually deprived of

all benefit thereof. Your petitioner specifies the following
82 acts which have been and are now being committed by the
defendant, in violation of the said injunction, and by means whereof your petition has been and is now deprived of all benefit therefrom.

The day after the granting of the said injunction the defendant adopted and published a new tariff of express charges to be paid by the public generally for express service upon its line of railroad, including therein the accessorial service performed in collecting, by means of wagons and servants, express matter about the cities upon the line of its road, and in carrying the same in the custody of its own *of its own* messengers and at its own risk, and making personal delivery thereof at destination to the consignees at their respective abodes or places of business, and demanded for the first time of your
petitioner, and now demands of your petitioner, the payment
83 by it of the rate specified in such tariff, declining and re-
fusing to make therefrom, at the demand of your petitioner, a reasonable deduction or abatement for the accessorial service aforesaid performed by your petitioner, through its own instrumentalities, and not accepted from or permitted to be performed by the defendant, and utterly refused, and now refuses, to transport the express matter of the public in the charge of your petitioner, except upon the payment by your petitioner to the defendant of a compensation for such accessorial service, although not, in fact, performed or accepted by it, and after their tariff rates aforesaid.

That the said defendant thereafter also demanded for the first time of your petitioner, and yet demands of your petitioner, an inspection of the contents of the express matter of the public entrusted
to the custody of your petitioner to be transported by it to
84 points of destination, some of which are accessible only over
the defendant's line, and placed by your petitioner in the custody of its own messengers upon the express trains of the defendant, upon which the defendant usually and habitually heretofore transported such express matter, and stating for reason the refusal of your petitioner to permit such inspection against the consent and under the protest of your petitioner, threw off from said trains the express matter placed thereon as aforesaid, and wholly failed and refused to transport the same, whereby your petitioner was prevented from performing its duty and obligations to the owners of said express matter in respect to the speedy and safe transportation thereof to destination over the usual and most expeditious
route; and your petitioner avers that such inspection was
85 never before allowed by plaintiff, nor was such a demand
ever before made upon your petitioner by the defendant, or ever before made upon or conceded by any express company; yet it is now persistently made upon your petitioner, and your petitioner's compliance therewith made a condition upon which alone the defendant would transport the matter of your petitioner.

That the said defendant has refused for the first time since the issuance of said injunction to accept the express matter in the charge of your petitioner when the same was contained in sealed packages, destined for points reached by the defendant's line, and also for points in *in* the States beyond the same.

That it has demanded, and now demands, an inspection of the boxes and trunks and bags of your petitioner, and has as-
86 serted, and now, for the first time since said injunction, asserts
a right to charge upon each package therein separately, irrespective of their aggregate weight as contained in said boxes and [4] trunks and bags; that it has caused such boxes, trunks, and bags to be ejected from its cars, and has refused transportation for the same.

That it has demanded from your petitioner since the issuance of [5] said injunction, and for the first time pre-payment of its charges according to said tariff rate before it would transport the express matter in the charge of your petitioner.

That it has ejected your petitioner by force, and without notice [6] from officers on the line of its road, which your petitioner had theretofore and for a long time previously occupied.

That it has charged the public less rates for express ser-
87 [7] vice than said tariff rates, and less than it has charged
your petitioner.

That it has instructed its agents, who had therefore acted as the [8] agents of your petitioner not to act any longer in its behalf.

That it has required your petitioner to pay fare for its messengers [9] while in custody of express matter on its passenger trains, at and after first class passenger rates, which was never done prior to said injunction in this cause.

That to divert custom from your petitioner it has persistently [10] made a discrimination as to weights of merchandize presented to them by your petitioner for transportation, and by other parties by estimating the weight of the merchandize presented by other
parties at much less than the real weight of said articles and
88 charging said parties at the estimated weights, and by rigidly
and minutely weighing at their full weight the articles presented by your petitioner and charging them at such full weight.

That to divert custom from your petitioner it has issued free [11] passes to those, other than the petitioner, having express matter to be transported, which was never done prior to said injunction.

And your petitioner further avers, as it is advised and believes, [12] that the said express tariff is illegal, and that the charges to your petitioner thereunder of rates in accordance therewith is illegal, unjust, and unreasonable; that the defendant has no lawful right to inspect the express matter confided to your petitioner or the boxes, trunks, or bags, in which the same
was contained or to refuse to transport the same, or
89 to charge after said tariff rates upon each parcel therein con-
tained, or to eject the same from its cars or to demand prepayment thereon from your petitioner which it does not demand from the public, or to eject your petitioner from the offices occupied by it at the time of the commencement of this suit, or to charge your petitioner more than it charges the public, or to divert its custom by the issuance of said passes, and that each and every of said acts is

violative of the spirit and intent of the said injunction and destruction
of the business of your petitioner.

And your petitioner avers, as it is advised and believes, that it
was the purpose and intent of said injunction to preserve and continue
the relations between your petitioner and said defendant in
the precise state and condition in which they were when
90 the same was issued, and that the same and other similar injunctions
issued by other courts determine that the railway co's
owe certain duties to the express co's, and that the latter have certain
rights which the court would protect until the final hearing in
full proofs by said court of said causes, respectively.

After the commencement of the commission by defendant of the
acts aforesaid your petitioner, by letter, twice requested that the
said illegal acts might cease, and it hoped and expected that the
same would cease until the court, by its final decree herein, should
have definitely determined the rights of the respective parties hereto.
And your petitioner would not now call the attention of the
court thereto had not your petitioner's requests passed unacknowledged
and was not its business being absolutely destroyed thereby.

91 Your petitioner further avers, as it is advised and believes,
that it was not the intention of this court to leave the question
of the compensation to be paid by it to the said defendant, to the
sole and arbitrary decision of the said defendant, but to reserve to
itself the sole and only right to judicially determine the same, and
that such question has been put in issue by the defendant in its
answer herein in the 26, 27, 30, 31, 37, and 38 paragraphs in the
answer herein, to which your petitioner refers, and that your petitioner
has already taken, and is now about to take, evidence in relation
thereto, and without a full examination and cross-examination
of witnesses having knowledge thereof this court cannot properly be
judicially possessed of all the facts and circumstances which should
be taken into consideration in determining the same, and that
92 such facts and circumstances upon such issue in the case cannot
lawfully or properly be brought before the court by *ex parte*
affidavits, nor ought the court to be asked upon an interlocutory
application to decide an issue which is properly only to be decided
upon final hearing and by final decree.

Your petitiener further avers that precisely the same question of
compensation arises and is to be decided in the suits in Indiana and
Kentucky in said bill referred to, and in the said suit in the State
of Ky. the plaintiff has taken all its evidence in relation thereto, and
that in both of said suits the defendants therein have been required
to continue the business in the same manner and to receive the same
compensation as had been done before said interference by
93 defendant and before said injunction, and that the said plaintiffs
are now continuing to pay precisely the same compensation
to the railway defendants therein as they were paying at the
time when the injunctions therein were respectively issued.

Your petitioner further avers, as an evidence as well of the interest
of this court as of the other courts by which similar injunctions

have been issued, that the question of compensation should be reserved until it could be decided fully upon the final hearing; that in the case in the circuit court of the United States for the district of Colorado of Dinsmore, as president of the Adams Express Co., vs. Denver & Rio Grande Railway Co., his Honor, Judge Hallett, stated, in his opinion orally delivered at the time of granting an injunction therein, and in answer to a question of counsel addressed thereto, as follows:

94 "I wish to be understood that the matter of compensation is open. I only intend to provide that the company shall pay at the rate they have been paying during the pendency of the suit or until the next term, leaving the matter of compensation open. If it should appear that you are entitled to more than you now get, we will give you more."

And under such decision the said Adams Express Co. has been paying at the rate heretofore paid by it.

And your petitioner further shows that the amount of $195 per day, heretofore and at the time of the commencement of this suit paid by it, was a just and ample compensation to the defendant for all the express facilities afforded by it to your petitioner, and
95 that such payment has been continuously made during the time covered by the contracts set forth in the bill herein, and extended over a period from six to eight years, and that the defendant is not entitled under any aspect of the case to demand or receive during the pendency of this suit any increase of compensation for such facitities.

Your petitioner further avers that at the time when the said two consracts were made, and during the period of six or eight years during which such payment of $195 per day was made, your petitioner was in the sole enjoyment of the conduct of the express business over the said defendant's lines - that shortly prior to the commencement of this suit in May last the said defendant commenced to do an express business over its lines, and is now daily en-
96 gaged in the conduct thereof, and that thereby the quantity of express matter afforded to your petitioner for transportation has been diminished, and by consequence the receipts of your petitioner therefrom lessened, and that such fact is proper to be called to the attention of the court in asking for relief in the premises.

Wherefore your petitioner demands, in aid of the injunction already issued herein, that the said defendant may be directed by the court to refrain during the pendency of this litigation from preventing or obstructing said plaintiff from continuing and carrying on its said business upon the cars of defendant in the same manner as the same had been done prior to said injunction, and from the further continuance of each and every of the acts aforesaid, or of any similar acts tending to interfere with the business of your
97 petitioner, or its full enjoyment of express facilities on defendant's lines, as contemplated by said original injunction.

And that your petitioner shall not be compelled or required, during the pendency of this action, to pay any other or larger sum as compensation for express facilities to be exercised and enjoyed by it than it was paying at the time this injunction was granted, and that *that* your petitioner may have such other or further or different relief herein as to the court may seem meet.

Your petitioner prays that a rule may issue in this cause to defendant to show cause, upon a day to be named by the court, why the prayer of your petitioner herein should not be granted.

S. M. BRECKENRIDGE,
GLOVER & SHEPLEY,
Sol's for Comp't.

98 UNITED STATES OF AMERICA, } *ss:*
Eastern District of Missouri, }

C. H. Albright, being duly sworn, on his oath states: That he has read the above petition, and that the matters and things as therein stated he believes to be true.

C. H. ALBRIGHT.

Subscribed and sworn to before me, this 15th October, 1880.

A. P. SELBY,
U. S. Commissioner, East. Dist. Mo.

Marshal's Return.

UNITED STATES OF AMERICA, } *ss:*
Eastern District of Missouri, }

I have executed this writ by delivering to Thomas Allen, president of the within-named St. Louis, Iron Mountain and Southern Railway Company, a copy of the within petition and rule to show cause at St. Louis, in said district, on the 16th day of October, A. D. 1880. 99

FELIX COSTE,
U. S. Marshal, E. D. Mo.,
By JAMES B. GEGGIE,
Deputy.

And afterwards, to wit, on the 25th day of October, A. D. 1880, the following further proceedings were had, and appear of record in said cause, to wit:

SOUTHERN EXPRESS CO., Complainant,
vs.
ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO., Defendant. } 1667.

Now comes defendant, by its solicitors, and files its answer to the rule to show cause.

Said answer is in words and figures following, to wit:

100 *Answer to the Rule to Show Cause.*

SOUTHERN EXPRESS COMPANY
vs.
THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY CO.

In the Circuit Court of the United States for the Eastern District of Missouri.

The defendant, for answer to the plaintiff's petition, praying that defendant be required to show cause why it should not be punished for contempt for violating the injunction heretofore issued, says it denies that the intention of the court, when granting said injunction, was to leave the plaintiff in the enjoyment of the same facilities on the line of the defendant's road that it had enjoyed before the granting of said injunction, or that it was then enjoying, 101 because by said petition, on which said injunction was granted, it appeared that said plaintiff was doing its business on said road under and by virtue of a contract which had been terminated by the parties; that what the court did say and intend, as the defendant is informed and believes, was that the plaintiff should have and enjoy the same facilities in the conduct of the express business permitted to any other express company, or exercised by the defendant itself, on payment by plaintiff of reasonable compensation therefor, which, the defendant says, was nothing more nor less, as it is informed and believes, than the law governing the case.

Defendant admits that, by the contract set up in the plaintiff's original bill in this cause, certain facilities had been accorded to the plaintiff, among some of which were the right of plaintiff to 102 put a messenger in charge of its safes, packing trunks, and baggage, and its right to have such baggage carried on the passenger train, and that it might pay therefor upon the 10th of each month, for the business of the preceding month. Defendant says said rights were accorded to the plaintiff by reason of the terms of said contract, and that said contract had been terminated long prior to the filing of plaintiff's bill, and that plaintiff had and has only such rights as the law compels the defendant to grant to any other express company or shipper upon its line of road.

Defendant admits that under the two contracts set out by plaintiff's bill herein it was to receive but one hundred and ninety-five ($195) dollars per day for the services it was to render under those contracts for the plaintiff, with the additional compensation for the excess over a given number of hundreds of pounds to be 103 carried for the plaintiff, but defendant denies that said compensation was either reasonable or adequate, but was unreasonably small and inadequate, for the services aforesaid, and therefore cannot justly furnish any guide for determining what would now be reasonable compensation for said services; and the said terms, having been made by a contract which no longer has any existence or force, cannot be properly pleaded or set up herein.

Defendant denies that since the granting of said injunction it has undertaken, or is now or has at any time or in any manner attempted or endeavored, to defeat the same, and to prevent the plaintiff from realizing any beneficial effects or protection therefrom.

Defendant denies that it has by any act or step attempted
104 to defeat the intention of the court in the issuance of said injunction, or to deprive the plaintiff of the use of the express facilities or the profitable enjoyment thereof accorded to every other person or to itself on the line of its railroad.

Defendant denies that it has defeated or violated the spirit and intention of said injunction by anything whatever done or suffered upon its part, or that it has virtually deprived the plaintiff of all benefits thereunder; but, upon the contrary, avers that it has kept and observed in the most strict faith the spirit and intention of the order of the court.

Defendant says it admits that, after the granting of said injunction, it made, as it is informed and believes it had a right to do, a list of charges to be paid for express services rendered by it to the plaintiff and all other persons alike using its road; that said
105 list of prices and charges was much smaller than the list of charges theretofore demanded of the public by the plaintiff, and were in all respects reasonable and proper charges for such services, and that the same were purposely by the defendant put at such a rate as to include any and all services of whatever nature rendered by any person using the line of the defendant's road.

Defendant is not clear as to whether it understands the full meaning of the averment as to the "custody of its own messengers and at its own risk, and in making personal delivery thereof." If by the allegation under consideration the plaintiff means to aver that it has been denied the right of custody of its own goods and packages and that its messengers have been deprived of the handling
106 and possession of them, and that the delivery thereof has been taken away from it, then this defendant denies the same, and avers that the said express company has had the custody of its own property and had access to the cars by and through its own messengers; or, if the allegation means that these rights claimed by it have been usurped by the defendant, then the defendant denies each and every one of them.

Defendant denies that it ever has been asked or requested by the plaintiff to make any deduction for any service performed by it whatsoever for or on account of collecting or delivering freight to or from the road, but admits that it would have refused to allow any compensation therefor, because it denies the plaintiff's right thereto.

Defendant denies that it has refused at all, "utterly or
107 otherwise," to transport the express matter of the public in charge of the plaintiff except upon the payment of compensation for accessorial service, although not in fact performed or accepted by it, and at and after their tariff rates aforesaid.

Defendant denies that any demand of or for a rebate for any kind of service performed in gathering or distributing freight has ever been made by the plaintiff upon it, and it denies that the plaintiff is entitled to any such consideration or compensation at its hands.

Defendant denies that it ever has demanded of plaintiff inspection of the contents of its express matter, and denies that it ever refused to carry any of its express matter without inspection except as hereinafter stated.

Defendant denies that it has refused to carry any express
108 matter in the custody of the plaintiff, or by any act of its
prevented or interfered with the plaintiff's performance of its duty to the owner of express matter entrusted to its care. Defendant states, however, that some time in the forepart of July last it learned that the plaintiff was, for the first time, in the use of its road, putting its express matter into boxes, trunks, safes, and bags, and in this way shipping through over the line of the defendant articles of great value without rendering to the defendant any adequate compensation for the articles thus carried; that thereupon the defendant requested of the plaintiff to give the value and kind of articles, whether money or other goods, it was thus carrying, so that it might make a reasonable charge for the service it was performing; that
the plaintiff upon one occasion refused and neglected, and
109 persisted in such refusal and neglect to give the defendant a
list of the articles and the value thereof, defendant stating at the time to the agents of the plaintiff that it had no objection to carrying such articles; that defendant wanted to carry all the freight plaintiff could bring, but simply wanted to know the value of the articles it was carrying, so that it might regulate its reasonable charges thereon; but yet plaintiff refused and persisted in its refusal to furnish the list or value of the articles then under consideration. Thereupon the defendant did set out of its car the boxes and bags containing the articles aforesaid, which the defendant says it is informed and believes it had a perfect right to do under the circumstances; that this is the only case of the sort; that since that time
the plaintiff has furnished a list of the articles by it boxed
110 and shipped and the value thereof, so far as the defendant
knows.

Defendant denies that it ever made the inspection of the articles brought to it for transportation by the plaintiff a condition upon which it would transport the same, and denies each and every allegation thereof.

Defendant denies that it ever has, under any circumstances whatever, refused to transport anything of any kind for the plaintiff whenever the plaintiff brought it to be transported, and would tell defendant what it was and the value of it.

Defendant denies that it ever demanded of the plaintiff to break its packages for the inspection of the agents of the defendant, but has simply asked plaintiff to furnish defendant a list of the articles and the value thereof.

Defendant denies that it has demanded, or is now demand-
111 ing, an inspection of the contents of the packages of plaintiff,
but avers that it has a right to know the contents thereof.

Defendant denies that it has, since the granting of the injunction, for the first time asserted its right to charge for each package, irrespective of the weight thereof.

Defendant denies that it ever has ejected from its cars anything whatever belonging to the plaintiff, only in the case above stated, where the plaintiff refused to give a list of the articles or the value thereof.

Defendant says that after the granting of the injunction herein it did not demand prepayment for freight carried by it for the plaintiff for more than four weeks; that it presented its accounts from day to day for carrying the freight of the plaintiff, and payment thereof was refused, and defendant so served the plaintiff until its bill amounted to more than the sum of six thousand (6,000) dollars; that defendant then learned that said plaintiff was utterly insolvent, and had no means, within the jurisdiction of this court or elsewhere, out of which defendant could collect its bills for the services rendered to the plaintiff; that defendant thereupon demanded, after due notice to the plaintiff, prepayment for all the freight carried thereafter for it, since which time defendant has, as it had a right to do, as it is informed and believes, demanded of the plaintiff prepayment for the services that defendant was rendering for it. 112

Defendant denies that it has ejected the plaintiff by force and without notice from offices on the line of its road; that the plaintiff — had for a long time previously occurred, and says the truth concerning this allegation is that defendant had no more room than was absolutely necessary for the safe, convenient, and proper transaction of its own business, and so informed the plaintiff, and the plaintiff thereupon vacated the said rooms. 113

Defendant denies that it has charged the public less rates for express services than its said tariff rates, and less than it has charged the plaintiff.

Defendant admits that it has instructed its agents, who had theretofore acted as the agents of the plaintiff, not to act any longer in its behalf, but says the facts are that the increase of its business demanded the entire time of its agents.

Defendant says that in charging the fare for the messengers it charged only the usual and reasonable rates for such services, which it is informed and believes it had a right under the law to charge, and it has gathered the same thing from the order of the court made herein granting the injunction. 114

Defendant denies that to divert custom from the plaintiff it has issued, or suffered to be issued, or caused or procured to be given out, any pass or passes to persons having express matter to be transported over the defendant's road, but that in all things it has conformed to the injunction herein, and transacted its business with reference to the plaintiff as it did with reference to everybody else.

Defendant denies that its rate of charges is either unreasonable or illegal, but says that the same is in all respects reasonable.

115 Defendant says it believes, as a matter of course, that express companies have certain rights which the court will protect.

Defendant denies that the plaintiff ever sent it any one or two letters, as alleged in the bill.

In response to the allegation as to the advice the plaintiff has had as to what the court intended in reference to the question of compensation to be paid by plaintiff, defendant says it has been advised and believes that the intention of the court is clearly expressed in the restraining order granted herein, where it says the defendant is to render to the plaintiff the services required upon payment by plaintiff of reasonable compensation therefor, which the defendant says is the only charge or demand it has made of the plaintiff for any services it has rendered or that it expects to render for the plaintiff.

Defendant does not claim or believe that it has the right to
116 make an oppressive or unreasonable charge against the
plaintiff or any other person demanding like services of defendant.

Defendant admits that all disputes with reference to the tariff or charges involved in this litigation can only be determined at and by a final hearing upon full proof.

Defendant has no sufficient knowledge or information to enable it either to admit or deny what is in dispute in the bills in Indiana and Kentucky, referred to by the plaintiff, nor what the courts have decided thereon, nor what orders were made therein; nor has this defendant any sufficient knowledge to enable it to admit or deny the proceedings had in the case of Dinsmore, President of the Adams Express Company, *vs.* The Denver and Rio Grande Railroad Company, nor what was said in said suit by his honor Judge
117 Moses Hallett, nor what rate was paid to said railroad company for transportation by said express company; but this defendant denies that anything in said petition mentioned as having been done in the cases in Indiana, Kentucky, or Colorado is either authority or has binding force upon this court in this cause, and says that the same ought to be stricken out as frivolous.

Defendant denies that one hundred and ninety-five ($195) per day for the service demanded of it by the plaintiff is at all adequate or a just compensation; that since the said sum was fixed, which was done by contract between the parties, the express business on said road has multiplied more than ten fold, and what was fair compensation under said contracts would be absolutely unjust at the present time.

Defendant denies that, by reason of its doing an express
118 business, the quantity of express matter offered to the plain-
tiff has been made less than what it was when said contracts were made, but avers that the increase of business along the line of its road has vastly increased the plaintiff's express business over what it was at the creation of said contracts, notwithstanding the fact that the defendant does an express business itself, which is owing to the vast increase of business, as aforesaid, along the line of defendant's road.

Defendant says the thing sought to be done by the petition, to which this is an answer, is to get this honorable court to readjudicate the question of compensation that the defendant is to charge plaintiff for carriage on defendant's road, and which question was

119 provisionally settled by the court in its order granting the injunction aforesaid, and cannot now be reopened in the manner sought by plaintiff, as defendant is informed and believes.

THOROUGHMAN & PIKE,
Solicitors for Defendant.

A. W. Soper, general superintendent of defendant, makes oath and says: That he has read the foregoing answer, and knows the contents thereof, and that the matters therein, as stated, are true of his own knowledge, except those facts stated upon information and belief, and those he believes to be true.

A. W. SOPER.

Subscribed and sworn to before me, this 25th of October, A. D. 1880.

[SEAL.] L. L. WALBRIDGE,
Notary Public, City of St. Louis.

120 Subscribed and sworn to before me, as interlined, this 25th day of October, A. D. 1880.

A. P. SELBY,
U. S. Commissioner.

121 And afterwards, to wit, on the 6th day of November, A. D. 1880, the following further proceedings were had and appear of record in said cause, to wit:

Order Modifying Provisional Injunction.

SOUTHERN EXPRESS Co., Complainant,
vs.
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY Co., Defendant. } 1667.

The petition of the plaintiff for a modification of the provisional order of injunction heretofore made, having been presented to the court, together with the answer thereto and affidavits and counter-affidavits, and the respective solicitors having been fully heard in the premises, it is ordered that the provisional injunction heretofore made in this cause be modified so that the same may read as follows:

122 The defendant, his agents, employees, and servants are hereby enjoined, until the final determination of this suit, from preventing the plaintiff from enjoying equal facilities in the conduct of its express business with those permitted to other express companies or exercised by the defendant itself with respect to such business on payment by the plaintiff of reasonable compensation for such services as may be rendered in this behalf by the defendant.

And it is further ordered that the defendant be enjoined from including under the term "reasonable compensation" any accessorial charges, and from making any discrimination against the plaintiff for return of empty kegs or packages, and from charging the plaintiff higher rates of freight than are charged against other companies, and that it exacts for the services of its own express department; the said rates as to the plaintiff not to exceed those now established by the defendant for like services from other parties or for the conduct of its own express department. 123

It is further ordered that the defendant be enjoined from preventing the transportation of express matter by the plaintiff over defendant's roads, and from requiring as a prerequisite or condition for said transportation the listing or disclosure by the plaintiff of the contents of the packages by the plaintiff presented to the defendant for transportation, and from preventing the messengers of the plaintiff on payment of passenger fare from like accommodations for the care and custody of plaintiff's shipments as are accorded to messengers of other express companies, or the agents, servants, and employees of the defendant engaged in like service.

124 And afterwards, to wit, on the 6th day of November, A. D. 1880, the following further proceedings were had and appear of record in said cause, to wit:

Order Appointing Special Examiners, &c.

SOUTHERN EXPRESS COMPANY, Complainant,
vs.
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Defendant.
} 1667.

By consent, leave is granted complainant to take testimony herein until March 1st, 1881, with leave to defendant to take testimony to the first day of the next term of this court.

It is ordered that the testimony to be taken in this cause at Memphis, Tennessee, be taken before Isaac A. Morrison, who is appointed a special examiner for that purpose, or before any United States commissioner at said city, on the usual notice being given to the respective parties. 125

It is further ordered that L. L. Walbridge, of St. Louis, be, and he is hereby, appointed a special examiner herein to take proof generally.

126 And afterwards, to wit, on the 3d day of March, A. D. 1881, the following further proceedings were had and appear of record in said cause, to wit:

Order Enlarging Time to Take Testimony.

SOUTHERN EXPRESS COMPANY, Complainant,
vs.
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Defendant.
} 1667.

On motion, the time to take testimony herein is enlarged, as follows: To defendant, to May 14th next to close, and to complainant, to July 1st next to close in rebuttal.

127 Afterwards, to wit, on the 14th day of October, A. D. 1881, the following further proceedings were had and appear of record in said cause, to wit:

Order Setting Cause for Final Hearing.

SOUTHERN EXPRESS CO., Complainant,
vs.
ST. LOUIS, IRON M'T & SOUTHERN R'Y CO., Defendant. } 1667.

Ordered that this cause be, and it is, set down for final hearing on the 5th day of January next.

128 And afterwards, to wit, on the 7th day of February, A. D. 1882, the following further proceedings were had and appear of record in said cause, to wit:

SOUTHERN EXPRESS COMPANY, Complainant,
vs.
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Defendant. } 1667.

This cause came on to be heard, and was argued by counsel; but not being concluded at the hour of adjournment, it was ordered that further proceedings herein be continued until to-morrow morning at ten o'clock.

129 And afterwards, to wit, on the 9th day of February, A. D. 1882, the following further proceedings were had and appear of record in said cause, to wit:

Case Taken Under Advisement.

SOUTHERN EXPRESS COMPANY, Complainant,
vs.
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Defendant. } 1667.

This cause came on to be further heard, and was argued by counsel and submitted, and by the court taken under advisement.

And afterwards, to wit, on the 25th day of March, A. D. 1882, the following further proceedings were had and appear of record in said cause, to wit:

130 *Decree.*

THE SOUTHERN EXPRESS COMPANY
vs.
THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

And now this day come the parties aforesaid, and, by their counsel then and there present, bring on this cause to be heard on the pleadings and proofs, and the same were then and there presented to the court, and the argument of counsel for the respective parties is heard, and the said cause is then and there submitted, and due deliberation having been thereupon had—

131 It is by the court ordered, adjudged, and decreed as follows:

I. That the express business, as fully described and shown in the record, is a branch of the carrying trade that has, by the necessities of commerce and the usages of those engaged in transportation, become known and recognized so as to require the court to take notice of the same as distinct from the ordinary transportation of the large mass of freight usually carried on steamboats and railroads.

II. That it has become the law and usage, and is one of the necessities of the express business, that the property confided to an express company for transportation should be kept, while in transit, in the immediate charge of the messenger or agent of such express company.

III. That to refuse permission to such messengers or agents to accompany such property on the steamboats or railroads on which it is to be carried, and to deny to them the right to the custody of the property while so carried, would be destructive of the express business, and of the rights which the public have to the use of such steamboats and railroads for the transportation of such property so under the control of such messengers or agents.

IV. That the defendant, its officers, agents, and servants have no right to open or inspect any of the packages or express matter which may be offered to it for transportation by the plaintiff's company, or to demand a knowledge of the contents thereof, nor to refuse transportation thereof, unless such inspection be granted or such knowledge be afforded.

V. That it is the duty of the defendant to carry the express
132 matter of the plaintiff's company, and the messengers or
agents in charge thereof, at a just and reasonable rate of compensation, and that such rate of compensation is to be found and established as a unit, and is to include as well the transportation of such messengers or agents as of the express matter in their custody and under their control.

VI. That on and subsequent to the first day of April, 1878, the said defendant afforded to the said plaintiff all the facilities needed by it for the conduct of its express business over the defendant's lines, and such as were specifically provided for in the contracts in the bill herein set forth; that thereafter the defendant notified the plaintiff that such facilities would be withdrawn, and that it was the intention and purpose of the defendant to exclude the plaintiff's company from its lines on and after the 25th day of May, 1880; that such intention and purpose were restrained by the preliminary injunction order of the court, which said injunction order was afterwards modified as appears in the record.

VII. That it is the duty of the defendant to afford to the plaintiff all express facilities, and to the same extent and upon the same trains that said defendant may accord to itself, or to any other company or corporation engaged in the conduct of an express business on the defendant's lines, and to afford the same facilities to plaintiff on all its passenger trains.

VIII. That the plaintiff keep and render monthly a true account of the services performed for it by defendant, and pay therefor at the rate hereinafter specified, on or before the 15th of each month after the date hereof for the business of the month preceding, and that the defendant has no right to require prepayment for said 133 express facilities or payment therefor at the end of every train, or in any other manner than as is herein provided; and that plaintiff execute and deliver to the defendant a bond, in the sum of one hundred and fifty thousand dollars ($150,000), conditioned well and faithfully to make such payments as are herein provided, and with surety to be approved by a judge of the court.

IX. That it is and was the duty of the said defendant to afford and to have afforded such facilities to the plaintiff as herein specified for a just and reasonable compensation.

X. Whereas, it is alleged by complainant, that since the commencement of this suit and the service of the preliminary order of injunction herein the defendant has, in violation of said injunction and of the rights of complainant, made unjust discriminations against complainant, and has charged complainant unjust and unreasonable rates for carrying express matter; therefore, it is ordered that complainant have leave hereafter to apply for an investigation of these and similar allegations, and for such order with respect thereto as the facts, when ascertained, may justify, and for the appointment of a master to take proof and report thereon.

XI. That the defendant, its officers, agents, servants, and employees, and all persons acting under their authority, be, and they hereby are, permanently and perpetually enjoined and restrained from interfering with or disturbing, in any manner, the enjoyment by the plaintiff of the facilities provided for in this decree to be accorded to it by the said defendant upon its lines of railway, or such as have been heretofore accorded to it for the transaction of the business of the plaintiff, and of the express business of the public confided to its care, and from interfering with any of 134, 135 the express matter or messengers of the plaintiff, and from excluding or ejecting any of its express matter or messengers from the depots, trains, cars, or lines of the said defendant as the same are by this decree directed to be permitted to be enjoyed and occupied by the said plaintiff, and from refusing to receive and transport in like manner as the said defendant is now transporting, or as it may hereafter transport, for itself or for any other express company over its lines of railway, the express matter and messengers of the said plaintiff, and from interfering with or disturbing the business of the said plaintiff in any way or manner whatsoever; the said plaintiff paying for the services performed for it by the defendant monthly as herein prescribed, at a rate not exceeding fifty per centum more than its prescribed rates for the transportation of ordinary freight, and not exceeding the rate at which it may itself transport express matter on its own account, or for any other express or other corporation, or for private individuals, reserving to either party the right at any time hereafter to apply to this court, according to the rules in equity proceedings, for a modification of this decree, as to the measure of compensation herein prescribed.

It is further ordered, adjudged, and decreed that the defendant pay the costs to be taxed herein, and that an execution or a fee bill issue therefor.

GEO. W. McCRARY,
Circuit Judge.

136 And afterwards, to wit, on the 29th day of March, A. D. 1882, the defendant filed an application for appeal, in words and figures following, to wit:

Application for Appeal.

United States Circuit Court for Eastern District of Missouri.

SOUTHERN EXPRESS COMPANY
vs.
ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

Now comes the defendant, by its solicitors, and objects and excepts to the decree entered in this cause, and each and every part thereof; and the said defendant, conceiving itself greatly aggrived by the said decree, and each and every part thereof, prays the court to allow it an appeal therefrom to the Supreme Court of the United
137 States, and that a full and complete transcript of the record in this cause, together with copies of the proofs, and of such entries and papers on file as may be necessary on the hearing of the appeal, be transmitted, with all convenient dispatch, to the said Supreme Court.

THOS. J. PORTIS,
March 29th, 1882. *Solicitor for Def't.*

I hereby certify that, in my opinion, there is good cause for appeal in the above-stated cause.

THOS. J. PORTIS,
Sol. for Def't.

138 And on said 29th day of March, A. D. 1882, the following further proceedings were had and appear of record in said cause, to wit:

SOUTHERN EXPRESS COMPANY, Plaintiff,
vs.
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Defendant.
} 1667.

Now comes defendant, by its solicitors, and objecting and excepting to the decree entered herein, prays an appeal from the decree of this court to the Supreme Court of the United States.

And thereupon it is ordered that on said defendant filing a good and sufficient bond, in the sum of one thousand dollars, said appeal be allowed as prayed.

139 And afterwards, to wit, on the 13th day of April, A. D. 1882, the following further proceedings were had and appear of record in said cause, to wit:

Bond Approved.

SOUTHERN EXPRESS COMPANY, Plaintiff,
vs.
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Defendant.
} 1667.

Now comes plaintiff, by its solicitors, and presents its bond in the sum of $150,000, as required by the decree of March 25, 1882, entered herein; and thereupon said bond is approved and filed.

Said bond is in words and figures following, to wit:

140 *Injunction Bond.*

Circuit Court of the United States, Eastern District of Missouri.

THE SOUTHERN EXPRESS COMPANY
vs.
THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY.

Know all men by these presents, that The Southern Express Company, as principal, and Henry B. Plant, 584 5th avenue, New York city, State of New York, and Frederick E. Gibert, of 298 5th avenue, New York city, N. Y. State, as sureties, are held and firmly bound unto the said St. Louis, Iron Mountain and Southern Railway Company in the sum of one hundred and fifty thousand dollars, lawful money of the United States of America, to be paid to the said 141 St. Louis, Iron Mountain and Southern Railway Company, its successors or assigns; for which payment, well and truly to be made, the said Southern Express Company and the said Henry B. Plant and Frederick E. Gibert, bind itself and themselves as aforesaid, jointly and severally, firmly by these presents.

Sealed with the seal of the said company and with the seals of the said sureties, this seventh day of April, in the year one thousand eight hundred and eighty-two.

Whereas the said Southern Express Company heretofore commenced a suit in equity in the said court against the said St. Louis, Iron Mountain and Southern Railway Company, in which such proceedings were had that, on the 25th day of March, A. D, 1882, a certain decree was pronounced therein, to which reference is hereby had and made, in which it was, among other things, provided 142 and decreed as follows, to wit:

"That it is the duty of the defendant to afford to the plaintiff all express facilities, and to the same extent and upon the same trains that said defendant may accord to itself, or to any other company or corporation engaged in the conduct of an express business on the defendant's lines, and to afford the same facilities to plaintiff on all its passenger trains; and—

"That the plaintiff keep and render monthly a true account of the services performed for it by defendant, and pay therefor at the rate hereinafter specified, on or before the fifteenth of each month after the date hereof (that is, after the 25th day of March, 1882, the aforesaid date of said decree), for the business of the month preceding;
and that the defendant has no right to require prepayment
143 for said express facilities, or payment therefor at the end of
every train, or in any other manner than as herein provided;
and that the plaintiff execute and deliver to the defendant a bond in the sum of one hundred and fifty thousand dollars ($150,000), conditioned well and faithfully to make such payments as are herein provided, and with surety to be approved by a judge of the court; the said plaintiff paying for the services performed for it by the defendant monthly, as herein prescribed, at a rate not exceeding fifty per centum more than its prescribed rates for the transportation of ordinary freights, and not exceeding the rate at which it may itself transport express matter on its own account, or for any other express or other corporation, or for private individuals; reserving to either party the right at any time hereafter to apply to this court, ac-
according to the rules in equity proceedings for a modifications
144 of this decree as to the measure of compensation herein pre-
scribed.

Now, therefore, the condition of the above obligation is such, that if the above bounden Southern Express Company shall well and faithfully make unto the said St. Louis, Iron Mountain and Southern Railway Company such payments as are in said decree provided, or such payments as said court may hereafter prescribe under any modification of said decree, and according to the true intent and meaning of the said decree, without any fraud or delay, then the above obligation to be void; otherwise, to remain in full force and virtue.

SOUTHERN EXPRESS COMPANY, [SEAL.]
By H. B. PLANT, *Pres'd't.*
H. B. PLANT. [SEAL.]
FRED. E. GIBERT. [SEAL.]

145 Sealed and delivered in the presence of—
CHARLES NETTLETON.
A. FIELDING.

UNITED STATES OF AMERICA, }
Southern District and City of New York, } *ss:*

On this seventh day of April, A. D. 1882, before me personally appeared Henry B. Plant, to me personally known and known to me to be the president of the Southern Express Company, the prin-

cipal in the foregoing bond, and acknowledged that he executed the same as and for the act and deed of the said Southern Express Company, and that the seal thereto annexed was the seal of the said company; and also then and there appeared Henry B. Plant
146 and Frederick E. Gibert, also to me known, and personally known to me to be the persons of that name named as sureties in the foregoing bond, and severally acknowledged that they executed the same for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and official seal the day and year hereinabove written.

[SEALS.] CHARLES NETTLETON,
A Commissioner for the State of Missouri in New York,
and a Notary Public for New York County in N. Y.

UNITED STATES OF AMERICA, }
Southern District and City of New York, } *ss:*

Henry B. Plant and Frederick E. Gibert being severally
147 duly sworn, do severally each for himself depose and say: That he is a resident of New York city, N. Y., and a citizen thereof, and a householder therein, and that he is worth the sum of one hundred and fifty thousand dollars over and above all his just debts or liabilities which he owes or has incurred, and exclusive of property exempt from execution.

H. B. PLANT.
FRED. E. GIBERT.

Subscribed and sworn to before me, this seventh day of April, 1882, at New York city, county, and State, by the said H. B.
148 Plant and Frederick E. Gibert, as witness my hand and official stamp.

[SEALS.] CHARLES NETTLETON,
Notary Public for New York County in N. Y.,
and a Commissioner for Missouri in New York.

Approved:
SAMUEL TREAT, *Judge.*

149 And afterwards, to wit, on the 15th day of May, A. D. 1882, the following further proceedings were had and appear of record in said cause, to wit:

SOUTHERN EXPRESS COMPANY, Plaintiff,
vs.
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Defendant. } 1667.

Now comes the defendant, by its solicitor, and presents to the court its appeal bond herein in the sum of $1,000, which is by the court approved and ordered to be filed.

It is further ordered that the clerk of this court make up a complete transcript of the record and proceedings in this cause, and transmit the same to the Supreme Court of the United States on or before the second Monday of October next.

150 Said appeal bond is in words and figures following, to wit:

Know all men by these presents, that we, The St. Louis, Iron Mountain and Southern Railway Company and ———, are held and firmly bound unto The Southern Express Company in the full and just sum of one thousand ($1,000.00) dollars, to be paid to the said Southern Express Company, its successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of ——, in the year of our Lord one thousand eight hundred and ——.

151 Whereas lately, at the March term, 1882, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between the Southern Express Company, plaintiff, and the St. Louis, Iron Mountain and Southern Railway Company, a defendant, decree was rendered against the said St. Louis, Iron Mountain and Southern Railway Company, and the said St. Louis, Iron Mountain and Southern Railway Company having appealed from said decree in the aforesaid suit to the Supreme Court of the United States, to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such, that if the said St. Louis, Iron Mountain and Southern Railway Company shall prosecute said appeal to effect, and answer all damages and costs if it fails to make good said appeal, then the above obligation to be void, else to remain in full force and virtue.

152 Sealed and delivered in presence of—

THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.,
By R. S. HAYES, *Vice Pres'd't.* [SEAL.]
R. C. KERENS. [SEAL.]
S. D. BARLOW. [SEAL.]

Attest:
[SEAL.] S. D. BARLOW, *Ass't Sec'y.*

Allowed.
SAMUEL TREAT, *Judge.*

153 At the hearing of said cause the following opinion was rendered by Honorable Samuel F. Miller, circuit justice, in words and figures following, to wit:

Opinion.

In the Circuit Court of the United States, Eighth Circuit, Eastern District of Missouri.

THE SOUTHERN EXPRESS COMPANY
vs.
THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

In this case it is ordered that the injunction hereinbefore granted shall remain in force until otherwise ordered by the court. Counsel will be heard at a convenient time upon the question of the form of the decree to be entered herein, in pursuance of the opinion of the court announced by Mr. Justice Miller, and herewith filed.

GEO. W. McCRARY,
February 21, 1882. *Circuit Judge.*

154 In the Circuit Court of the United States, Eighth Circuit.

THE SOUTHERN EXPRESS CO.
vs.
THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.
Eastern District of Missouri.

THE SOUTHERN EXPRESS CO.
vs.
THE MEMPHIS & LITTLE ROCK RAILROAD COMPANY.
Eastern District of Arkansas.

WILLIAM B. DINSMORE, Pres. Adams Express Co., &c.,
vs.
THE MISSOURI, KANSAS & TEXAS RAILWAY CO.
District of Kansas.

SAME
vs.
THE ATCHISON, TOPEKA & SANTA FE RAILROAD CO.
District of Kansas.

155 SAME
vs.
THE DENVER & RIO GRAODE RAILROAD COMHANY.
District of Colorado.

MILLER, Circuit Justice:

In these cases, argued before me at St. Louis, with Judges McCrary and Treat, I can do no more than present certain general conclusions at which my mind has arrived in regard to the propositions argued by counsel.

1. I am of the opinion that what is known as the express business is a branch of the carrying trade, that has, by the necessities of commerce and the usages of those engaged in transportation, become known and recognized.

That while it is not possible to give a definition in terms which will embrace all the classes of articles so usually carried, and 156 to define it with precision by words of exclusion, the general character of the business is sufficiently known and recognized as to require the court to take notice of it as distinct from the transportation of the large mass of freight usually carried on steamboats and railroads.

That the object of this express business is to carry small and valuable packages rapidly in such a manner as not to subject them to the danger of loss and damage which, to a greater or less degree, attends the transportation of heavy or bulky articles of commerce, as grain, flour, iron, ordinary merchandise, and the like.

2. It has become law and usage, and is one of the necessities of this business, that these packages should be in the immediate charge of an agent or messenger of the person or company engaged
157 in it, and to refuse permission to this agent to accompany
these packages on steamboats or railroads on which they are carried, and to deny them the right to the control of them while so carried, is destructive of the business, and of the rights which the public have the use of the railroad in this class of transportation.

3. I am of the opinion that when express matter is so confided to the charge of an agent or messengers, the railroad company is no longer liable to all the obligations of a common carrier, but that when loss or injury occurs, the liability depends upon the exercise of due care, skill, and diligence on the part of the railroad company.

4. That under these circumstances there does not exist on the part of the railroad company the right to open and inspect all packages so carried, especially when they have been duly closed
158 or sealed up by their owners, or by the express carrier.

5. I am of the opinion that it is the duty of every railroad company to provide such conveyance, by special cars or otherwise attached to their freight or passenger trains, as are required for the safe and proper transportation of this express matter on their roads, and that the use of these facilities should be extended on equal terms to all who are actually and usually engaged in the express business.

If the number of persons claiming the right to engage in this business at the same time, on the same road, should become oppressive, other considerations might prevail; but until such a state of affairs is shown to be actually in existence in good faith, it is unnecessary to consider it.

6. This express matter and the person in charge of it should
159 be carried by the railroad company at fair and reasonable
rates of compensation, and where the parties concerned cannot agree upon what that is, it is a question for the courts to decide.

7. I am of the opinion that a court of equity in a case properly made out has the authority to compel the railroad companies to carry this express matter and to perform the duties in that respect which I have already indicated, and to make such orders and decrees, and to enforce them by the ordinary methods in use necessary to that end.

8. While I doubt the right of the court to fix in advance the precise rates which the express companies shall pay and the railroad companies shall accept, I have no doubt of its right to compel the performance of the service by the railroad company, and after it is rendered to ascertain the reasonable compensation and compel its payment.

160 9. To permit the railroad company to fix upon a rate of
compensation which is absolute, and insist upon the payment in advance, or at the end of every train, would be to enable them

to defeat the just rights of the express companies, to destroy their business, and would be a practical denial of justice.

10. To avoid this difficulty, I think that the court can assume that the rates or other mode of compensation heretofore existing between any such companies are *prima facie* reasonable and just, and can require the parties to conform to it as the business progresses, with the right to either party to keep and present an account of the business to the court at stated intervals, and claim an addition to, or rebate from, the amount so paid.

161 And to secure the railroad companies in any sum which may be thus found due them, a bond from the express company may be required in advance.

11. When no such arrangement has heretofore been in existence, it is competent for the court to devise some mode of compensation to be paid as the business progresses, with like power of final revision on evidence, reference to master, &c.

12. I am of opinion that neither the statutes nor constitutions of Arkansas or Missouri were intended to affect the right asserted in these cases, nor do they present any obstacle to such decrees as may enforce the rights of the express companies.

162 On the 21st day of May, A. D. 1880, the following affidavit was filed in said cause:

Affidavit of H. C. Fisher.

In the Circuit Court of the United States for the Eastern District of Missouri.

THE SOUTHERN EXPRESS COMPANY
vs.
THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY.

H. C. Fisher, being first duly sworn, deposes and says: That he is a citizen of Nashville, Tennessee, and has been in the employ of the Southern Express Company for the past fifteen years, and 163 for some time past has been superintendent for the Western Division thereof, covering, among others, the business of said company in the States of Missouri and Arkansas, and in this capacity is necessarily well acquainted with its various connections. Farther this affiant states that he is the same person to whom was addressed the notice, dated May 15th, 1880, and issued by Thos. Allen, president of said Iron Mountain and Southern Railway Company, copy whereof is printed on pages 25 and 26 of the complainant's bill in the above-entitled cause, and that he has been and is familiar with the contents of all the communications given with Thos. Allen and A. W. Soper in said bill contained, in one of which notice of the violation to terminate the contract between said complainant and said defendant is given, and is the one dated May 15th inst., above cited, in which notice is given of the pur- 164 pose of said defendant to "transact all its express business on its account," on & after the first day of June, 1880.

And this affiant further states that, as he is informed and believes,
it is the intention of said defendant to terminate said contract with
complainant on the 20th of this month of May, A. D. 1880, and to
do its own express business on and after said first day of June, 1880,
and to exclude said complainant, its express co'p'y and messengers,
from its railway lines, and to refuse to award to said complainant
any facilities or accommodations for its said business, such as it
has heretofore and for years past awarded to it, and that such exclusion
will take place unless restrained by the order of this court,
and that of the same to take place the express business of said
complainant over the lines of said defendant's railway
165 will not only be [word illegible] injured, but will be absolutely
destroyed; that its customers and patrons will be lost to it
and its revenues arising therefrom; that its good will, property,
and investment will be rendered worthless; that its ability to keep
its contracts with other railway and express companies will be terminated,
and that its usefulness to the public would be destroyed.
Farther this deponent saith not.

H. C. FISHER.

Subscribed and sworn to before me, this 21st day of May, 1880.

A. P. SELBY, *U. S. Com'r.*

166 On the 21st day of October, *21st*, A. D. 1880, there were filed
the following affidavits in said cause, to wit:

Affidavit of Morgan A. Casey.

STATE OF MISSOURI, }
County of Washington, } *ss:*

Affiant, being duly sworn, states: That he is the agent of the Southern Express Company at Potosi, Missouri, a station on the St. Louis, Iron Mountain and Southern railroad.

That he daily forwards over the line of the St. Louis, Iron Mountain & Southern railroad, in the custody of the messengers of the Southern Express Company, various articles and matter which has been intrusted to the care and custody of the Southern Express Company.

That among the articles so forwarded are empty beer kegs,
167 which, when full, were shipped from St. Louis to parties in
Potosi, and on their being returned empty to the shippers,
the St. Louis, Iron Mountain & Southern railroad weigh these returned
empty beer kegs and assess charges thereon for the services
performed by them in the transportation of them back, requiring
said charges assessed by them to be prepaid before allowing same to
enter the cars, as instanced on Monday, the nineteenth day of July,
1880, when they charged nine & $\frac{75}{100}$ dollars on thirty-three returned
empty beer kegs, weighing 1,300 lbs., at seventy-five cents per 100
lbs., consigned to Anthony & Kuhn, at St. Louis, Missouri.

That when these returned empty kegs are presented for transportation on passing trains by any person or party other than the

9—260

Southern Express Company the said St. Louis, Iron Mountain
168 & Southern railroad not only does not require charges to be
prepaid, but takes them back free of any charge whatever.

MORGAN A. CASEY.

Subscribed and sworn to before me, this 19th day of July, 1880.
[SEAL.] JAMES A. SHIELDS,
Notary Public.

My term expires Feb'y 6th, 1883.

Affidavit of E. P. Jackson.

Affiant, being duly sworn, states: That he is book-keeper for the house of Henry Bruhan, dealers in beer, ale, &c., Cairo, Ills.; that the St. Louis, Iron Mountain and Southern R. R. Express have and
do offer, where beer, ale, ice, &c., is shipped by said express,
169 to return the empty kegs and packages free of charge, and
that they have been and are daily so doing.

E. P. JACKSON.

Subscribed and sworn to before me, this 16th day of July, 1880.
[SEAL.] CHAS. CUNNINGHAM,
Notary Public.

Affidavit of George J. Becker.

Affidavit, being duly sworn, states: That he is book-keeper for the firm of Andrew Lohr, dealers in beer, ale, ice, &c., Cairo, Ills.

That the St. Louis, Iron Mountain & Southern R. R. Express have and do offer, where beer, ale, ice, &c., is shipped by said express, to
return the empty kegs and packages free of charge, and that
170 they have been and are daily so doing.

GEORGE J. BECKER.

Sworn and subscribed to before me, this 16th day of July, 1880.
[SEAL.] CHAS. CUNNINGHAM,
Notary Public.

Affidavit of J. G. Howard.

Affiant, being duly sworn, states: That he is a messenger of the Southern Express Company, running between St. Louis, Mo., and Columbus, Ky., on the line of the St. Louis, Iron Mountain and Southern R. R.

That there are parties along the line of said railroad who buy beer,
ale, &c., in St. Louis, and after emptying the keg or parcel in
171 which the beer was shipped to them return same to the ship-
per. A considerable amount of said beer, &c., is sent by express, and that where the beer comes by express the empties are returned by the same means. That where this beer is shipped by the Southern Express Co., and the empties are returned by that Co., the St. Louis, Iron Mountain & Southern R. R. causes the same to be weighed, and charges as assessed by the said railroad for the services

performed by them in the returning said empty returned kegs or packages, demanding and requiring same to be paid before the said returned empty kegs or parcels are put in the cars.

That he has been told and believes the same to be true; that when these returned empty kegs are presented for shipment by any person or party other than the Southern Express Company the
172 said St. Louis, Iron Mountain & S. R. R. makes no charge
whatever for transporting them back on their passenger trains, but, on the contrary, carries them free of charged.

J. G. HOWARD.

Subscribed and sworn to before me, this 19th July, 1880.

A. P. SELBY,
U. S. Commissioner, East. Dist. Missouri.

Affidavit of G. R. McFaddin.

COUNTY OF MILLER, *State of Arkansas:*

I, Geo. R. McFaddin, agent, Texarkana, and for the Southern Express Company, being duly sworn, do depose and state as follows:

173 That on July 15th, 1880, as agent of the said So. Ex. Co.,
I shipped by the hands of the messenger of the said So. Ex. Co., on the express train of the St. L., I. M. & S. Railroad Co., two empty baskets, being that class of matter known in express business as "returned empties," and on demand of one F. W. Brown, agent of the express department of the said railroad company, I paid the sum of twenty-five cents for transportation of the said empty baskets to one A. Shackelford, Arkadelphia, and although the said F. W. Brown was warned by me that the said empty baskets had been rec'd by and through one Southern Express Company's messenger over the line of the said railroad, filled with express matter, and were of that class of matter known as "returned empties."

And I do further certify that on certain other dates, to
174 wit, July 4th, 1880, and July 15th, 1880, I shipped as follows:
July 4th, "one returned empty" chest, weighing 119 pounds; and July 15th, 1 returned empty chest, weighing 91 pounds; and although the said F. W. Brown knew, and was then and there advised, that said chests had been received at Texarkana from St. Louis, filled with express matter, and were being returned empty, the said F. W. Brown did then and there demand the sum of five dollars and seventy-five cents, which I paid, as transportation on the said two chests to St. Louis.

And I do further certify that upon clear investigation I do find and know, and therefore do solemnly aver, that the said railroad company does not make any charge for like returned empties to
and from Texarkana for shippers other than the said South-
175 ern Express Company, all of which is done to its great damage and detriment.

G. R. McFADDIN,
Agent S'n Ex. Co.

THE UNITED STATES OF AMERICA,
The State of Texas, Eastern District of Texas:

Personally appeared before me H. D. H. Brensing, a commissioner of the United States circuit court for the eastern district of Texas, Geo. R. McFaddin, to me well known as the agent of the Southern Express Company at Texarkana, Ark., and who, after being by me first duly sworn, upon oath says that the foregoing statement is true and correct.

In testimony whereof, I hereunto set my hand officially, this the 15th day of July, A. D. 1880.

H. D. H. BRENSING,
U. S. Com'r, E. D. T.

176 *Affidavit of J. H. Waters.*

Affiant, being duly sworn, states that he is a messenger of the Southern Express Company, running between St. Louis, Mo., and and Columbus, Ky., on the line of the St. Louis, Iron Mountain and Southern R. R. That there are parties along the line of said railroad who buy beer, ale, &c., in St. Louis, and after emptying the keg or parcel in which said beer was shipped to them return the same to the shipper. A considerable amount of said beer, &c., is sent by express; *that* and that where the beer comes by express the empties are returned by the same means. That where this beer is shipped by the Southern Express Co., and the empties are returned by that
Co., the St. Louis, Iron Mt. and Southern railroad causes the same
177 to be weighed and charges as assessed by the said railroad for the
services performed by them in returning said empty kegs or packages, demanding and requiring same to be paid before the said returned empty kegs or parcels are put in the cars.

That he has been told, and believes the same to be true, that when these returned empty kegs are presented for shipment by any person or party other than the Southern Express Company, the said St. Louis, Iron Mountain and So. R. R. makes no charges whatever for transferring them back on their passenger trains, but, on the contrary, carries them free of charge.

J. H. WATERS.

Subscribed and sworn to before me, this 19th July, 1880.

A. P. SELBY,
U. S. Commissioner, East. Dist. Missouri.

178 *Affidavit of M. B. Vennard.*

I, M. B. Vennard, agent Southern Express Company, Malvern, and being duly sworn, do depose and state as follows: That during the month of June, 1880, I delivered certain empty beef chests to H. Riley, agent St. Louis Iron Mountain and Southern Railroad Co., to be by him forwarded through the express department of said railroad company, which was done on the following days in the month of June above-named, to wit, June 10th, 11th, 12th, 13th, 14, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 23d, 25th, 27th, and 29th, and in

July, 1880, on the 1st, 2d, 3d, and 5th days thereof, and that the said empty chests were forwarded by him without record or charge to either consignor or consignee, by reason of their having
179 been rec'd from St. Louis, Mo., by and through the express
department of the said railroad company, containing, as they did, fresh meats. And I do further certify that on the 9th day of July, 1880, these shipments of beef, which had thitherto been shipped by and through the express department of the said railroad Co. were diverted to the Southern Express Company then and now doing an express business on the same express trains on the said railroad company, and that the said chest being by me offered for return to St. Louis on the 9th day of July, 1880, and weighing 100 pounds, the sum of one & fifty hundredth- dollars ($1.50) was demanded of me by H. Riley, agent of the said railroad company, which am't was duly paid, and the demand made and paid, because the said chest was returned through and by the messenger of Southern
180 Express Company. And I do further certify that on certain
other days, to wit, the 11th, 13th, and 15th days of July, 1880, other like and similar chests were by me returned to St. Louis, on which I paid on demand the sum of one dollar and fifty cents each. And I do further certify that the demand and consequent payment was a discrimination against the So. Ex. Co., and was done to the great damage and detriment of its business.

M. B. VENNARD,
Agent S'n Ex. Co.

Sworn to and subscribed before me, on this 15th day of July, A. D. 1880.

[SEAL.] E. H. VANCE, Jr.,
Notary Public.

To said affidavit was attached a bill of lading, in words and figures following, to wit:

181 (Form 21 A.) 4-10-80-30 M.

So. Ex. Co. Malvern, 7 | 9, 1880.

The St. Louis, Iron Mountain & Southern Railway Co., Dr., for transportation of merchandise from Malvern to St. Louis.—W. B., No. 39.

Description of Merchandise.	Weight.	Rate.	Freight.
1 sac , agt. St. Louis	13	2 25	60
1 empty chest, C. Koler—empty meat chest ret. to shipper	100	1 50	1 50
Charges advanced.			
Total	------	------	2 10

Car. No. ——. Received payment for the Co.
Copy. H. RILEY, *Ag't.*

182 *Affidavit of L. Stout.*

Affiant, being duly sworn, states that he is agent for the Southern Express Co. at Coleman's, Ky., and that at various times since June 29th, 1880, the I. M. R. R. Ex. Co. did charge the Southern Express Co. all M. T. beer kegs their full tariff after weighing same, and, after protesting, the amount was reluctantly paid by S. Stout, agent So. Ex. Co.

And furthermore he (Stout) states that he has been told, and believes the same to be true, that when these returned empty kegs, &c., are presented for transportation on passenger train by any person or party other than the So. Ex. Co., they (St. Louis & I. M. Ex. Co.) make no charge therefore, but, on the contrary, take them back free.

L. STOUT.

183 STATE OF KENTUCKY, } *ss:*
County of Hickman, }

This day appeared before me, John G. McLean, a notary public in and for the county in the State aforesaid, L. Stout, agent of the Southern Express Company, who subscribed his name to the foregoing affidavit, and swore that the statements contained therein were true to the best of his knowledge and belief.

In witness whereof, I have hereunto set my hand and affixed my notarial seal, at my office, in Columbus, this nineteenth day of July, 1880.

[SEAL.] JNO. G. McLEAN,
Notary Public, Hickman County.

184 *Affidavit of Louis Heckel.*

Affiant, being duly sworn, states that he is clerk for G. H. Crosse, agent for the Southern Express Co. at Dexter, Mo.

That he attends to most of the business of the Southern Express Co. at Dexter, Mo.

That there are various parties in Dexter, Mo., who buy beer, ale, ice, &c., in Cairo, Ills., and elsewhere, having same shipped to them at Dexter, Mo., by express. That when the kegs or other packages are emptied of their contents the empty kegs or parcels are returned to the shippers.

That when these returned empty kegs or packages are returned by the Southern Express Co. the St. Louis, Iron Mountain and Southern R. R. assesses charges thereon upon the actual weight, 185 demanding and requiring that these charges as assessed by them for the services performed by the said St. Louis, Iron Mountain & So. R. R. in their transportation be paid before said returned empty kegs and parcels are allowed to enter the car, and causing same to be done, as instanced. On July 12th, 1880, there was returned from Dexter, Mo., to H. Bruhan, Cairo, Ills., one bundle of empty sacks, which same sacks had come from Cairo, Ills., to Dexter, Mo., by Southern Express Co., filled with ice. That the St. Louis, Iron Mountain & Southern R. R. demanded and caused the South-

ern Express Co. to pay the sum of twenty-five cents for taking these
sacks back to Cairo, Ills.; and also July 16th, 1880, twelve returned
empty kegs, five returned empty boxes, and one box returned
186 empty sacks, weighing six hundred and twenty pounds, all
consigned to Cairo, Ills., upon which they enforced the prepayment of the sum of three dollars and ten cents ($3.10); and on July the 7th, 1880, one returned empty barrel and six returned empty kegs, all consigned to Cairo, Ills., weighing two hundred and thirty-three pounds, upon which they enforced the prepayment of the sum of one dollar and fifteen cents ($1.15.)

That he is told, and believes the same to be true, that the said St. Louis, Iron Mountain & Southern R. R. makes no charge for returning these empty returned kegs and packages, or their passenger trains, when same are presented for shipment by any person or party whatsoever other than the Southern Express Co., but, on the contrary, takes them back free of charge whatsoever.

LOUIS HECKEL.

187 STATE OF MISSOURI, } ss:
County of Stoddard, }

Subscribed and sworn to before me, this, the 19th day of July, A. D. 1880.

[SEAL.] CHAS. E. STOKES,
Notary Public.

Com'd June 11th, 1875. Term expires May 13th, 1881.

Affidavit of G. H. Bridges.

Affiant, being duly sworn, states that he is agent of the Southern Express Company, at Charleston, Missouri. That in returning empty beer kegs, which, when full, came by Southern Express, the St.
Louis, Iron Mountain and Southern Railway Company as-
188 sesses charges for the services performed by them in the
transportation of such returned empty kegs, and requires same to be prepaid, before same are allowed to enter the car, as instanced July 6th, 1880, they caused the Southern Express Company to pay on (39) thirty-nine returned empty beer kegs consigned to Cairo, Ills., 1300 lbs, at 30c. per hundred, three dollars and ninety cents; that when these said returned empty kegs and packages are presented for transportation back on passenger trains by any person or party other than the Southern Express Company, the said St. Louis, Iron Mountain and Southern Railroad Company not only does not weigh and make charges on same, but, on the contrary, takes them back free of any charge whatsoever.

GEO. H. BRIDGES,
Agent S. Ex. Co., Charleston, Mo.

189 Subscribed and sworn to before me, this 19th day of July, A. D. 1880.

[SEAL.] W. A. BUSH,
Notary Public.

Term expires Jan'y 15th, 1883.

190 *Affidavit of J. W. Keyes.*

(Form 21—A.) 2-14-80-30 M.

So. E. Co. JULY 16, 1880.

To St. Louis Iron Mountain & Southern Railway Co., Dr., for transportation of merchandise from Frederickton.—W. B., No. 49.

Description of Merchandise.	Weight.	Rate.	Freight.
4 empty kegs, E. Auhenser & Co., St. Louis	135	100	1 35
Charges advanced.			
Total			

Car No. ——. Received payment for the Co.

M. PHILLIPS, *Ag't.*

Affiant, being duly sworn, states that he is clerk for the agent of the Southern Express Co. at Frederickton, Mo.; that the agent of the
St. Louis, Iron Mountain & Southern R. R. Co. at Frederick-
191 ton weighs and assesses charges for the services of the said
St. Louis, I. M. & S. R. R. Co. on all matter forwarded from Frederickton on the Southern Express Co., and demands and causes said charges as assessed to be prepaid before such matter is allowed to enter their car.

That parties in Frederickton buy beer in kegs in St. Louis, Mo., and after emptying the kegs they return them to the shippers.

That when these kegs came full from St. Louis by the Southern Express Co. the empty kegs are returned by the same Co.; that the agent of the St. Louis, I. M. & S. R. R. Co. assesses charges on behalf on these kegs at one dollar per hundred pounds, and causes the same to be paid before said kegs are allowed to go in cars, as instanced July 16th, 1880, when he charges 1.35 as prepay-
ment of these charges on four kegs consigned to E. Auhenser
192 at St. Louis, Mo.; that notwithstanding that the agent of the
St. Louis, I. M. & S. R. R. Co. assesses and collects charges on these empty returned kegs when shipped by the Southern Express Co.; he is told, and believes the same to be true, that said agent of St. Louis, I. M. & S. R. R. Co. does not make any charge whatsoever for sending back the return empty kegs on passenger trains when the same are shipped by any person or party other than the said Southern Express Company.

JNO. W. KEYES.

Subscribed and sworn to before me, this 17th day of July, 1880.

L. T. SMITH,
Justice of the Peace.

STATE OF MISSOURI,
County of Madison, } *ss:*

193 I hereby certify that L. T. Smith, before whom the foregoing affidavit was made, and who has thereunto subscribed his name, was, at the time of so doing, a justice of the peace in and for the county aforesaid, and that he was duly commissioned and sworn on the 4th day of February, 1880, for a term expiring at general election, 1880, and that his signature thereto is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, as clerk of the county court for the county aforesaid, this 17th day of July, 1880.

[SEAL.] THEO. E. RONNIN, *Clerk.*

194 *Affidavit of A. W. Hacker.*

Prefixed to said affidavit are the two following papers in words and figures following, to wit:

A.

Form 139 E. 2-14-80-25 R.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.,
CAIRO STATION, *June* 10, 1880.

H. BRUHAN, Esq., *City.*

D'R SIR: The I. M. Ex. Co. will carry beer, &c., at following rates, and return empty kegs free:

To Charleston,	Mo.,	25c.	per	100.
" Duhlstadt,	"	30	"	"
" Blodgett,	"	30	"	"
" Worley,	"	35	"	"
" Sikeston,	"	35	"	"
" Dexter,	"	40	"	"
" Pop. Bluff,	"	45	"	"

195 Yours truly, H. H. MILBURN, *Ag't.*

B.

Rates by I. M. Ex.

(Original written with lead pencil.)

To Charleston,	25c.	per	100.
" Columbus,	25	"	"
" Sikeston,	35	"	"
" Dexter,	40	"	"
" Poplar Bluff,	40	"	"

On beer & ice, & return packages free. Beer way billed at 90 lbs. to keg.

Mr. BRUHAN: Above are rates by our line. Any business you may give us will receive prompt attention.

H. H. MILBURN, *Ag't.*

Affiant, being duly sworn, states that he is acting agent for
196 the American Express Co., the Southern Express Co., and the
Adams Express at Cairo, Ills.

That he is personally acquainted with H. H. Milburn, agent of the St. Louis, Iron Mountain and Southern R. R. at Cairo, Ills.

That he is also familiar with the handwriting of the said H. H. Milburn, and that the attached paper (marked A), date Cairo, June 10th, 1880, addressed to H. Bruhan, Esq., quoting rates on beer & ice to several points on the St. Louis, Iron M't'n & So. R. R., and also proposing to return empties free, is in the handwriting of the said H. H. Milburn, as is also the case with the pencil note also hereto attached, marked B.

A. W. HACKER.

Subscribed and sworn to before me, this 16th day of July, 1880.

[SEAL.] CHAS. CUNNINGHAM,
Notary Public.

197 *Affidavit of J. B. Ragsdale.*

I, J. B. Ragsdale, agent Southern Express Company at Texarkana, Ark., being duly sworn, depose and state as follows: That as agent of the Southern Express Company at Texarkana, Ark., I did receive from the express department of the St. Louis, Iron Mountain and Southern Railroad Company certain express matter on the dates named below, which express matter was transported over the St. Louis, Iron Mountain and Southern railroad by and through the express department of said railroad company; and I do further certify that the weights, description, address, and points from which
originally shipped, as set opposite each and every parcel in
198 the annexed list, is true and correct, both as to the words and
figures; and further, I do certify that when I received the said express matter that I paid charges for transportation as aforesaid and as set forth in column "A." I do further certify that column "B," hereto annexed, shows and sets forth the printed tariff of the said express department of the said railroad company, and are the figures and charges assessed against and caused to be prepaid by the "Southern Express Company" for the transportation of express matter of like description and weight, and from like points; and further, that column "C" in the annexed statement is a true and correct account of excess charged the Southern Express Company on the transportation of its own express matter, carried in the custody of its own messengers over the line of the said railroad company.

199

No. Article.	Weight.	Date.	From.	Address.	Destination.	Column A.	Column B.	Column C.
1 P., box mdse	5	Sept. 9 | 9	St. Louis	I. A. Sharp	Shreveport, Texas	25	50	25
1 pa. “	20	9 | 10	“	Casey & S	Ft. Worth, “	50	80	30
1 “ “	2	“	“	I. D. Brown	Paris, “	25	30	05
8 box peaches		“	“	H. & R	Houston, “	1 80	2 40	60
1 “ mdse	16	9 | 11	“	W. E. Bormer	Woodland, “	50	80	30
1 pa. “	8	“	“	A. P. Brown	Jefferson, “	25	60	35
1 “ “	14	“	“	Mason & E	Dallas, “	50	65	15
1 valise	8	“	“	A. P. Brown	Jefferson, “	25	60	35
1 pa. mdse	5	9 | 12	“	C. C. Connusky	Marshall, “	25	50	25
1 roll “	10	“	“	I. W. Jones	Shreveport, La	25	60	35
1 pa. “	1½	“	“	H. J. Hunter	Palestine, T'x	15	30	15
1 bale “	12	9 | 13	“	I. R. Hill & Bro	Willis, “	25	65	40
1 pa. “	7	“	“	W. H. Newman	Marshall, “	25	55	30
1 “ “	2	“	“	Moses Bros.	Austin, “	15	30	15
1 “ “	12	“	“	Huey & P	Dallas, “	25	65	40
1 “ “	14	“	“	M. Dumpley	Dennison, “	15	45	30
1 “ money	500.00	9 | 15	“	I. Goldman	Jefferson, “	90	1 40	50
1 trunk	42	“	“	W. H. Byor	Sherman, “	40	1 50	10
1 valise	13	“	“	McHusted	“ “	1 50	65	15
1 truss	2	“	“	A. R. Whitehead	Decatur, “	15	30	15
1 pa. mdse	10	“	“	L. McGown	Waco, “	50	60	10
1 sack “	58	“	“	T. C. Lewis	Shreveport, La	1 00	1 60	60
200								
1 box mdse	5	9 | 17	“	I. G. Keepsey	Corsicana, T'x	25	50	25
1 “ “	14	“	“	S. P. Moore	Webster, “	50	65	15
1 truss	45	“	“	C. Sundbery	Austin, “	1 25	1 50	25
1 pa. mdse	2	9 | 18	“	I. H. Fisher	Dallas, “	25	30	05
1 “ “	30	9 | 19	“	H. P. Thomas	Jefferson, “	75	1 05	30
1 “ “	16	“	“	R. R. Ijames	Clarksnia, “	50	80	30
1 “ “	5	“	“	W. Broyles	Palestine, “	25	50	25
1 “ “	19	“	“	H. Ford	“ “	50	80	30
1 box “	10	“	“	G. Storms	San Antonio	25	60	35
1 pa. “	18	9 | 20	“	I. Adams	Augusta	50	80	30
1 “ “	5	“	“	D. F. Stewart	Houston	25	50	25
1 “ “	20	“	“	E. R. Rowley	Jefferson	50	80	30
1 “ “	13	“	“	A. E. Gaston	Navasota	50	65	15
1 truss	3	“	“	Slatter & H	Sherman	15	35	20
1 pa. mdse	3	“	“	H. Brooks	Waco	15	35	20
1 “ “	10	9 | 21	“	F. H. Ellington	Queen City	25	60	35

All of which was done to the great detriment and damage to the business of the said Southern Express Company.

THE UNITED STATES OF AMERICA, *Eastern District of Texas:*

201 Personally appeared before me the undersigned authority, J. B. Ragsdale, ag't S. Exp. Co., to me well known, and who, after being by me first duly sworn upon oath, say- that the foregoing statement is true and correct.

J. B. RAGSDALE,
Agent So. Ex. Co.

Sworn to and subscribed before me, this 21st day of September, A. D. 1880.

H. D. H. BRENSING,
U. S. Com'r, E. D. T.

202 *Affidavit of Henry Clements.*

Henry Clements, being duly sworn, states that he is agent of the Southern Express Company at Lutesville, Mo.

That as agent for said company he daily forwards over the St.

Louis, Iron M't'n & So. R. R., in charge of the messengers of the Southern Express Co., various articles of merchandise, produce, and other matter intrusted to the care of the Southern Express Co.

That the agent of the St. Louis, Iron Mountain & Southern R.
R. at Lutesville has instructions to accurately weigh all matter
shipped by the Southern Express Co., and to require the charged
assessed by the said St. L., I. M. & S. R. R. for the services performed
by them in the transportation of such matter to be prepaid before
allowing the same to enter the cars of said St. L., I. M. & S.
203 R. R., and that agent said St. L., I. M. & S. R. R. does weigh
accurately all goods or matter forwarded by the Southern Ex-
press Co., and require the charges assessed as aforesaid to be prepaid
before allowing same to go into the cars of the St. L., I. M. & S. R.
R. That among other articles forwarded by the Southern Express
Co. are coops of live chickens sent to market in St. Louis, that these
coops of live chickens, when in custody of the Southern Express Co.,
as with all other matter in their custody, are weighed by agent said
St. L., I. M. & S. R. R., and charges assessed thereon upon the actual
weight, as instanced—July 5th, C. H. Rider & Co., shipped by So.
Ex. Co., one coop of chickens consigned to T. H. Jones & Co., St.
Louis, Mo., which was weighed by agent said St. L., I. M. & S. R.
R., found to weigh one hundred and twenty-five pounds, and
204 charges assessed to the sum of one dollar and forty cents;
July 8th the same firm shipped by So. Ex. Co. two coops of
chickens to the same consignee and destination, which were weighed,
found to weigh two hundred and thirty-four pounds, and charges
assessed thereon in the sum of two dollars and eighty cents, the
charges as assessed being demanded and collected before same were
allowed to go in car.

Further, that the agent of the said St. Lous, Iron Mt. & So. R. R.
does not weigh the coops of live chickens presented for shipment to
market in St. Louis if presented by any person other than the South-
ern Express Co., but takes them at an estimated weight of one hun-
dred pounds each, charging them one dollar and ten cents
205 each notwithstanding the fact that they are well advised that
such is not the true weight, and that instead of weighing one
hundred pounds each, as accepted by them, they will and do weigh
from one hundred and five pounds to one hundred and ninety
pounds each, and that it is a matter of daily occurrence for the said
R. R. Co. to practice said discrimination.

HENRY CLEMENTS.

STATE OF MISSOURI, *County of Bollinger*:

Sworn and subscribed to, by Henry Clements, to me personally known, this the thirteenth day of July, A. D. 1880.

[SEAL.] AUGUST SANDER,
Comission expires April 23, 1880.

206 *Affidavit of William J. Obermeyer.*

STATE OF MISSOURI, *City of St. Louis:*

William J. Obermeyer being first duly sworn on his oath, states that on the 25th day of June, 1880, he was messenger for the Southern Express Co. between St. Louis and Columbus, Ky. On that day the messenger of the St. L., I. Mt. & S. R. W. Express had in his charge for transportation, by that express co., a box marked A. Jaeger, Bismar-k, Mo., from St. Louis; I asked him the weight of the box, and he replied one hundred pounds. And that the charges on it were forty-five cents. I assisted in putting the box out of the car at Bismar-k, Mo., and am positive that it would not weigh 207 less than two hundred pounds. This box contained ice.

Affiant further states that while on duty as messenger for the Southern Express Co. he heard the agent at Carondelet, (St. Louis), of the St. L., I. M. & S. R. W. Co., and of the Iron Mountain Express, instruct the Iron Mountain Express messenger on the train at Carondelet to bill beer kegs at ninety (90) pounds apiece, estimated the actual weight of beer kegs as from one hundred to one hundred and seven. Further this deponent saith not.

W. J. OBERMEYER.

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

The above-named affiant, W. J. Obermeyer, being duly sworn, on his oath states that the matters and things stated in above-named affidavit are true and correct to the best of his knowledge and belief. My commission expires April 28, 1882.

JAMES B. MAGINN,
Notary Public.

208 *Affidavit of John F. Walther.*

I, J. F. WALTHER, messenger of the Southern Express Company, being duly sworn, do depose and state as follows: That as messenger of said Southern Express Company, on the express train of the St. Louis, Iron Mountain and Southern Railway Co., I received, July 20th, 1880, at St. Louis, Mo., two sacks, addressed as follows:

1 sack, 34 lbs., C. Beesbant, De Soto.
1 " 34 lbs., G. Mohn, "

On which the said railway company assessed and caused to be prepaid by the said Southern Express for transportation to De Soto, Mo., the sum of (30) thirty cents each, this being in accordance with the printed tariff of the Iron Mountain Railway's Express department.

And I do further certify that on the same day, to wit, July 209 20th, 1880, that one John Beapple, of St. Louis, Mo., did ship two sacks of like contents, and of same nature of merchandise as the two sacks above described, which were addressed to the same destination and to different parties, to wit:

1 sack, A. Hoffman, De Soto.
1 " H. Moehlman, "

And I do further certify that each of the above-described sacks weighed (50 lbs.) fifty pounds, and were shipped by and through the express department of the St. Louis, Iron Mountain and Southern Railway Company; and further, that a charge of (25) twenty-five cents each were made, the same being less than that charged said Southern Express Company—all of which was done to the great damage and detriment.

JOHN F. WALTHER.

Subscribed and sworn to before me, this 23rd day of July, 1880.

A. P. SELBY.
U. S. Commissioner.

210 *Affidavit of John D. Debois.*

STATE OF ARKANSAS, *County of White:*

I, J. D. DEBOIS, being duly sworn, do depose and state as follows: That on July 2d and July 3d, 1880, while acting as agent of the Southern Express Company, at Judsonia, White county, Arkansas, that I did then and there offer for shipment to the St. Louis, Iron Mountain and Southern Railroad Company's Express train certain fruit shipments, which fruit was contained in the boxes known and recognized on that day and thitherto by the agent of the said railroad company as third-bushel boxes, and the estimated weight of which was accepted by him from shippers, other than the said Southern Express Company, as sixteen and two-third pound each, or six boxes to the one hundred pounds. And
211 I do further certify that the fruit offered by me and received by the said railroad company, through its agent, G. W. Hilton, was weighed and charged on at actual weight, as more specifically described, to wit, forty-six boxes shipped on the 2d day of July, were weighed and adjudged to weigh by the said G. W. Hilton, eight hundred and thirty-eight pounds, and upon which the sum of eight dollars and forty cents was demanded by him, and paid by me, for the transportation of the same to the city of St. Louis, being an excess of seventy-two pounds in weight as allowed other shippers, and seventy-two cents in money as charged other shippers than the said Southern Express Company on that day and date. And further, fifty-eight boxes of like stand and measure shipped on the third day of July, 1880, to St. Louis, Mo.,
212 were weighed, or adjudged to weigh, by the said railroad agent, eleven hundred and fifty-five pounds, upon which prepay was demanded in the sum of eleven dollars and seventy cents, and paid by me to said railroad agent, thus showing an excess of weight of one hundred and forty-three pounds, and a consequent excessive am't for transportation to St. Louis as compared with that charged other shippers.

And further, I certify that on the day and date above named that the said railroad company's agent did not weigh or bill the fruits shipped by the St. Louis, Iron Mountain and Southern Railroad Company's express department, or received from shippers

other than the Southern Express Company, in excess of sixteen and
two-thirds pounds each, which *which* parcels contained six
213 boxes or upwards, thereby discriminating against said Southern
Express Co.

JOHN D. DEBOIS.

Subscribed and sworn to before me, this 9th day of July, 1880.

D. C. YOUNG, *J. P.*

Affidavit of M. B. Vennard.

State of Arkansas, *County of H. Springs:*

I, M. B. Vennard, agent of S'n Ex. Co. at Malvern, Arkansas, being duly sworn, do declare and affirm: That on the 16th day of
July, 1880, as agent for said express company, received from H.
Riley, agent of the St. Louis, I. M. & S'n R. R. Co. Express
214 Dep't a certain package weighing two (2) pounds, addressed
to M. Mendel, Hot Springs, Arkansas; that upon said p'k'g
there was assessed a price of ten cents on charges for transporting same from Little Rock, Ark., to Malvern, Ark., this charge being made by the St. L., I. M. & S'n R. R. Co's Ex. Dep't for carrying same upon said R. road, in and thro. their ag't & mess. on said road, which sum of ten cents I paid to said Riley, agent at Malvern, Ark., and *said Riley, agent at Malvern, Ark., and* said package was carried by me as agent and mess of the S'n Ex. Co. to H. Springs, and there delivered thro. the S'n Ex. Co., agent at Hot Springs, to consignee, M. Mendel.

I do further declare and affirm that on the same day and date, *i. e.*,
July 16, 1880, I received from the agent of the So'n Ex. Co.,
215 at Hot Springs, Ark., who received from the consignee aforementioned, M. Mendel, this same identical package, and that
I carried same to Malvern and turned over to the S'n Ex. Co. messenger doing business on the St. L., I. M. & S'n R. R., to be carried by the said S'n Ex. Co. to Little Rock, Arkansas, and returned to the original shipper, Mr. B. Gans.

I do further declare and affirm that, being called upon by said H. Riley, agent for said R. R. Co. to prepay charges on said package, he, the said agent, claimed and demanded the sum of (15) fifteen cents as his company's tariff on said package shipped by me as before mentioned, and the said charges so demanded were paid by me to him and his receipt taken therefor.

I do further declare and affirm that this unjust discrimina-
216 tion as *as* against the S'n Ex. Co., as shippers over the St. L.,
I. M. & S'n R. Road, is a great detriment and injury to the
business of the Southern Express Company.

M. B. VENNARD,
Agent S'n Ex. Co.

Sworn to and subscribed before me, on this 17th day of July, A. D. 1880.

[seal.]

E. H. VANCE, Jr.,
Notary Public.

217 *Affidavit of T. D. Herring.*

T. D. Herring, being duly sworn, states that he is a messenger of the Southern Express Company running between Cairo, Ills., and Poplar Bluff, Mo.

That on Tuesday, July the 6th, 1880, as messenger of the Southern Express Co., he carried in his possession from Bird's Point, Mo., to Charleston, Mo., seven boxes of peaches, weighing one hundred and twelve pounds, consigned to Deal and Crenshaw, Charleston, Mo. That one M. P. Fennell, messenger of the St. Louis, Iron Mountain and Southern R. R., demanded of him that he prepay the charges assessed by the said St. Louis, Iron Mountain & Southern R. R. for the services performed by them in transporting said peaches from Bird's Point, Mo., to Charleston, Mo., stating the same
218 to be the sum of fifty cents. That he (Herring) remonstrated with the said W. P. Fennell, messessenger of the St. Louis, Iron Mountain & Southern R. R., that such charge was exorbitant and out of proper proportion; the said W. P. Fennell, messenger St. Louis, Iron Mountain & So. R. R., insisted that the charge was correct and must be paid. That then one Thos. Kelly, conductor of the train, came to him (Herring), telling him that the charges must be prepaid, giving him to understand that if such was not done the peaches would be put off the train. That he then paid the charges as demanded under protest.

Also, that on Saturday, July 10th, 1880, W. P. Fennell, messenger of the St. Louis, Iron Mountain & Southern R. R., as
219 such messenger carried in his *his* possession from Bird's Point, Mo., to Charleston, Mo., nine boxes of peaches, weighing two hundred pounds, consigned to the aforesaid Deal & Crenshaw, Charleston, Mo., upon which the sum of fifty cents was charged Deal & Crenshaw. That on the twelfth day of July, 1880, there was returned from Dexter, Mo., to Cairo, Ill's, a lot of empty sacks done up in a bundle consigned to Henry Bruhan, Cairo.. Ill's. Said sacks had been sent when filled with ice, by So. Ex. Co. from Cairo, Ill's, to Dexter, Mo., and the empty sacks were then being returned to shipper.

That the agent of the St. Louis, Iron M't'n & So. R. R. at Dexter, Mo., demanded and required that the charges assessed by the said St. Louis, Iron M't'n & So. R. R. for the services performed
220 by them in the transportation of these empty returned sacks be prepaid before same were allowed to enter car, collecting therefor the sum of twenty-five cents.

That on July 15th, 1880, there was returned from Sikeston, Mo., to Charleston, Mo., a like lot of empty sacks, consigned Tom. Moss, Charleston, Mo., which had been sent when filled with ice, from Charleston, Mo., to Sikeston, Mo., by the St. Louis, Iron M't'n & So. R. R.; that the St. Louis, Iron M't'n & So. R. R. made no charge whatever for returning them, as it did in former instances, when So. Ex. Co. was the shipper. That it is the custom of the said St. Louis, Iron M't'n & So. R. R. on that part of this road coming under his knowledge, viz: That part lying between Cairo, Ill's, and

221 Poplar Bluff, Mo., to carry returned empty packages free whenever the full package was sent out by the St. Louis, Iron M't'n & So. R. R. Express, but whenever same was sent out by So. Ex. Co. when full, and the empty p'c'l is being returned, it is their custom to require the charges as assessed by them to be prepaid before allowing same to enter their cars.

T. D. HERRING.

Subscribed and sworn to before me, at Cairo, Ill's, this 16th day of July, A. D. 1880.

[SEAL.] H. H. CANDEE,
Notary Public.

222 *Affidavit of M. B. Vennard.*

STATE OF ARKANSAS, *County of Hot Springs.*

I, M. B. Vennard, agent Southern Express Company, at Malvern, Ark., being duly sworn, do depose and state as follows: That as agent of the Southern Express Company, at Malvern, Ark., I received, June 12th, 1880, from the express department of the St. Louis, Iron Mountain and Southern Railway Company, through H. Riley, agent, a chest of beef weighing two hundred and sixty-seven pounds, and containing one hundred and seventy-seven pounds of beef, upon which nett weight alone a charge of $1.50 per 100 lbs. was made by the said express department of the said railway
223 Co., amounting to two dollars and sixty-five cents, and which amount I paid as transportation from St. Louis to Malvern, and as agent of the S'n. Ex. Co. forwarded the said chest to Mess. Stitt, Rugg & Co., Hot Springs, Ark., to whom it was consigned and addressed.

And I do further certify that no charges were made or assessed on the tare weight of said shipment.

And further, I do certify that similar shipments of beef and other fresh meats in chests were more specifically descibed as to dates and weights as follows: June 13th, 1 chest one hundred and fifty pounds; June 14th, 1 chest one hundred and twenty-six pounds; June 15th, one chest one hundred and thirty-seven pounds; June 16th, 1 chest one hundred and forty-six pounds; and June 17th, one chest
224 one hundred and fifty-six pounds were received by me as agent Southern Express Company from the express department of the said St. Louis, Iron Mountain and Southern Railway Co. by and through its agent H. Riley, and that in each and every case above cited the rate of $1.50 per hundred lbs. was charged on the net weight of each shipment for transportation from St. Louis to Malvern, and which amounts were paid by me and the chests forwarded to destination at Hot Springs, Ark.

And I do further certify that in each and every case above cited no charge was made or assessed for the tare weight of said shipment, which tare weight was not in any case recorded on the express department way bills of the said railroad Co., and were ascertained by

225 actually weighing, to average from ninety to one hundred pounds in every case, or on each chest above cited. All of which was done to the great detriment and damage of the business of the Southern Express Company as similar shipments in like chests were being made from day to day during above-mentioned dates, from St. Louis to Hot Springs, Ark., by the Southern Express Company on the same express train, on all of which chests The Southern Express Company was charged equally in excess of the net weight of beef in said chests.

State of Arkansas, *County of Hot Spring:*

226 I, M. B. Vennard, express agent at Malvern, Hot Spring county, State of Arkansas, do solemnly swear that the statements in words and figures in the annexed and foregoing instrument of writing are true and correct. So help me God.

M. B. VENNARD,
Agent S'n Ex. Co.

Sworn to and subscribed before me, on this 8th day of July, A. D. 1880.

[seal.] E. H. VANCE, Jr.,
Notary Public.

Affidavit of A. L. Dunklin.

State of Missouri, *County of Butler:*

A. L. Dunklin, being duly sworn, states: That he is agent of the Southern Express Company at Poplar Bluff, Mo.

227 That as agent of the Southern Express Co. he daily forwards over the lines of the St. Louis, Iron Mountain and Southern R. R. in the custody of the messengers of the said Southern Express Co. various articles of merchandise and other matter intrusted to the care of the said Southern Express Co.

228 That the agent of the said St. Louis, Iron Mountain & Southern R. R. at Poplar Bluff, Mo., has instructions to accurately weigh all matter shipped by the Southern Express Co. over the lines of said St. Louis, Iron Mountain & Southern R. R., to assess the charges thereon for the services performed by the said St. Louis, Iron M't'n & So. R. R. in transporting said matter, and to require the same to be prepaid before the said goods are allowed to enter the cars of the St. L., I. M. & S. R. R. That the said Southern Express Co. has intrusted to its care considerable amount of beer in kegs to be transported from Cairo, Ills., to various parties at Poplar Bluff, Mo.

That when these kegs are emptied it is the custom to return them to the beer dealers at Cairo, Ills., or elsewhere, as the case may be.

That on the 7th day of July, 1880, there were given to him, as agent of the Southern Express Co., twenty-five of these empty returned beer kegs, all of which had come when full by Southern Express Co. from Cairo, Ills., to Poplar Bluff, Mo., and were then being returned to the dealers by the parties to whom originally sent.

That the agent of the said St. Louis, Iron M't'n & So. R. R. at Poplar Bluff, Mo., weighed these kegs aforesaid, and required the charges on same, at the rate of seventy-five cents per hundred pounds, to be prepaid before allowing same to be put in the car of the St. L., I. M. & S. R. R.

229 That he is told, and believes the same to be true, that the St. Louis, Iron M't'n & So. R. R. proposes to and does carry such returned empty beer kegs free when the full kegs were sent on passenger trains by any person or party other than the Southern Express Co.

A. L. DUNKLIN.

Sworn to and subscribed before me, this 16th day of July, A. D. 1880.

[SEAL.] THOMAS M. LANE,
Judge and ex-officio Clerk of Probate.

230 *Affidavit of M. B. Vennard.*

COUNTY OF HOT SPRINGS, *State of Arkansas:*

I, M. B. Vennard, agent of the Southern Express Company, Malvern, Ark., being duly sworn, do depose and state as follows: That as agent of the said Southern Express Company, I shipped on June 29, 1880, by and through the messenger of the said Southern Express Company, from Malvern, Ark., to St. Louis, Mo., two empty meat chests, returned to the St. Louis Beef Canning Co., St. Louis, Mo., which chests weighed four hundred and fifty pounds, and that on demand of H. Riley, agent St. Louis, Iron Mountain and Southern Railway Company, I paid the transportation at $2.25 per 100
231 lbs., am't'g to ten dollars and fifteen cents; and I do further certify that the said chest had been received from St. Louis, Mo., containing shipment of fresh meat, and that the said chests as shipped by me on the 29th of June, 1880, was known as that class of express matter called "returned empties." And further, I do certify that I shipped other and like empty chests, known as "returned empties," and more specifically described as to dates and weights as follows: July 1st, 1880, one empty chest, 255 pounds; July 3rd, 1880, one empty chest, 225 pounds; July 3d, another empty chest, 225 pounds, and July 6th, one empty chest, 210 pounds; July 8th, one empty chest, 255 pounds; on all of which I prepaid charges, on demand of H. Riley, agent for transportation, to St. Louis, Mo.,
232 at the rate of $1.50 per 100 lbs., amounting in all to the sum of seventeen dollars and fifty-nine cents—the said chests all having been received at the hands of the Southern Express Co. from St. Louis, filled with beef and other fresh meats, and upon which the said Southern Express Company made and assessed charges only when filled or when containing meats, and not when returned empty to St. Louis; and I do further certify that certain other chests of like character and description were delivered by me to the agent of the St. L., I. M. & S. R. R. Co., to be by him forwarded through the express department of the said railroad Co. during the dates above named, which was done without record and without charge by him,

and then to the detriment of the business of the said Southern Express Company.

STATE OF ARKANSAS, *County of Hot Spring:*

233 I, M. B. Vennard, express agent at Malvern, Hot Spring county, State of Arkansas, do solemnly swear that the statements, in words and figures, in the annexed and foregoing instrument of writing are true and correct. So help me God.

M. B. VENNARD,
Agent S'n Ex. Co.

Sworn to and subscribed before me, on this 8th day of July, A. D. 1880.

[SEAL.] E. H. VANCE, JR.,
Notary Public.

234 *Affidavit of Conrad Kohler.*

STATE OF MISSOURI, }
City of St Louis, } *ss:*

Personally appeared before me, the undersigned, a notary public within and for the city of St. Louis, State aforesaid, Conrad Kohler, who, being by me duly sworn, upon his oath says: That he is a butcher by occupation, doing business at the corner of 2nd and Elm streets, St. Louis, Missouri; that he shipped by the St. Louis, Iron Mountain & Southern Railway Express, to Messrs. Stitt & Co., hotel keepers in Hot Springs, Arkansas, the following personal property at the dates respectively mentioned, to wit:

1880, June 9. One box containing 168 lbs. of fresh meat.
10. " " 142 " "
1880, June 11. One box containing 177 lbs. of fresh meat.
235 " 12. " " 150 " "
" 13. " " 126 " "
1880, June 14. One box containing 137 lbs. fresh meat.
15. " " 146 " "
16. " " 156 " "
17. " " 156 " "
18. " " 160 " "
19. " " 202 " "
20. " " 169 " "
21. " " 150 " "
22. " " 203 " "
24. " " 229 " "
26. " " 240 " "
28. " " 238 " "
30. " " 211 " "
July 2. " " 225 " "
4. " " 219 " "
6. " " 222 " "

And that the boxes which contained said meat was returned to him by same express company free of charge within a few days after shipment was made as aforesaid.

CONRAD KOHLER.

236 Sworn and subscribed before me, this 12th day of July, A. D. 1880.

[SEAL.]

RICHARD F. KOSTER,
Notary Public, City of St. Louis, Mo.

Commissioned and qualified as notary public for a term expiring May 19th, 1881.

Affidavit of L. Stout.

Affiant, being duly sworn, states: That he is agent for the Southern Express Company at Columbus, Ky.; that on Wednesday, July 14th, the agent of the St. L., I. M. & S. R. R. refused to allow the package, trunks, and sacks destined to St. Louis, in custody of the messenger of the Southern Express Co., to enter the car of the said R. R.
237 until the same had been opened and an inventory of the contents of same had been taken by him; that, notwithstanding the fact that he (Stout) offered to prepay the charges on same, that the said agent of St. L., I. Mt. & S. R. R. persisted in his refusal, and would not allow said package, trunks, and sacks to enter their car until same was opened and an inventory of the contents made up by him. That he (Stout) protested against such action on the part of the agent of the St. L., I. M. & S. R. R. as an outrage, and has so continued daily to offer to prepay the charges as demanded upon the trunks and sacks, and to protest, but without avail, against the opening of said trunks and sacks, as the said agent of the St. L., I. M. & So. R. R. has paid no heed to either, and has continued and does still continue to make these outrage-
238 ous and unreasonable demands, and to persist therein. That finding that his offers to prepay and his protests against the outrage were without avail, he submitted and allowed the demands of the said agent St. L., I. M. & So. R. R., believing that it was better so to do than to delay the goods, to the detriment of those who, in giving the goods into our custody, had confidently given their interests into the keeping and care of the Southern Express Company.

L. STOUT.

STATE OF KENTUCKY, *County of Hickman:*

This day appeared before me, Jno. G. McLean, a notary public in and for the county in State aforesaid, L. Stout, agent of the Southern Express Company, who subscribed his name to the fore-
239 going affidavit, and swore that the statements contained therein were true.

In witness whereof, I have hereunto set my hand and affixed my notarial seal, at my office in Columbus, this nineteenth day of July, 1880.

[SEAL.]

JNO. G. McLEAN,
Notary Public, Hickman Co., Ky.

Affidavit of J. F. Walther.

I, J. F. Walther, messenger of the Southern Express Company, being duly sworn, depose and state as follows:

That on June 12th, 1880, while at my post of duty in the express car attached to the passenger train of the St. Louis, Iron Mountain and Southern Railway, which was then lying at Plum street, in the city of St. Louis, a certain party, to me unknown, came to the express car and asked for the messenger of the Southern Express Company, saying he wanted to ship by the Southern Express Company a bundle weighing 15 pounds, which he then and there offered to me, and which I, as messenger of said Southern Express Company, did then and there receive, and, as per custom and usage theretofore enjoyed, did bill the same according to address, to wit, A. Rauschenbach, Kimswick, Mo. This being done, one Thos. Le Master, messenger for the express department of the St. Louis, Iron Mountain and Southern Railway Co., then and there on duty as such in the same car attached to the said express train, did take, by force, the said package from my possession, denying the right to me, as messenger of said Southern Express Co., to continue in possession of said package, or to receive at the said Plum street depot any packages or parcels whatsoever, alleging as a reason for such conduct that he was acting under orders from one James Aikin, sup't of the express department of the St. Louis, Iron Mountain and Southern Railway Company. 240 241

J. F. WALTHER.

Subscribed and sworn to before me, this 20th day of July, 1880.

A. P. SELBY,
U. S. Commissioner, E. D. Mo.

242 *Affidavit of G. R. McFaddin.*

COUNTY OF MILLER, *State of Arkansas:*

I, Geo. R. McFaddin, agent of the Southern Express Company, Texarkana, Ark., being duly sworn, do depose and state as follows: That on July 15th, 1880, I received, as agent of the Southern Express Company, at Texarkana, from the Texas Ex. Co., three certain sacks of express matter, more specifically described as follows: One sack, 40 pounds, addressed Robert Wheeler, Cairo, Ill.; one sack, 24 pounds, addressed Jere Williams, St. Louis, and one sack, 25 pounds, addressed M. Bonner, Memphis, Tenn., all of which were received by me as agent aforesaid, to be forwarded to their several respective destinations; and I do further certify that the sacks above described were weighed by me in the presence of, according to custom, one F. W. Brown, agent of the express department of the St. Louis, Iron Mountain and Southern Railroad Company, as other matter was then and there weighed, and, this being done, the said three (3) sacks were by me placed in the express car attached to the train of the said R. R. Co., and although prepay was then and there offered to the said F. W. Brown, as its representative 243

of the said R. R. Co., at the tariff rates charged on such lik
weights to Cairo, St. Louis, and Memphis, he, the said F. W.
Brown, did refuse to permit me to forward the same, and did then
and there by physical force eject the said express matter from the
said express car of the St. L., I. M. & S. R. R. Co., in consequence of
which action the above-described sacks were left at Texarkana,
244 and did not go forward on the said express train, as this
Southern Express Company was in duty bound by its contract
with shippers to forward on the 15th day of July, 1880, as aforesaid,
all of which was done to the great damage and detriment of
the business of the said Southern Express Company.

GEO. R. McFADDIN,
Ag't S'en Ex. Co.

THE UNITED STATES OF AMERICA,
The State of Texas, Eastern Dist. of Texas:

Personally appeared before me, H. D. H. Brensing, a commissioner of the United States circuit court for the said eastern dist. of Texas, Geo. R. McFaddin, to me well known as the agent of the Southern Express Company, of Texarkana, Ark., and who, after being by me first duly sworn, upon oath says that the foregoing
statement is true and correct.
245 In testimony whereof, I hereunto set my hand officially,
this the 15th day of July, A. D. 1880.

H. D. H. BRENSING,
U. S. Com'r, E. D. T.

Affidavit of C. H. Albright.

In the Circuit Court of the U. S., Eastern District of Missouri.

In the Matter of THE SOUTHERN EXPRESS COMPANY
vs.
THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY.

246 C. H. Albright, being first duly sworn, on his oath states:
That he is the agent of the said Southern Express Company at
the city of St. Louis, and that in the discharge of his duty as said agent
he was present at the Union Depot in St. Louis prior to the departure
of the train of the St. L., I. M. & S. railway on the morning of
the (14th) fourteenth day of July, A. D. 1880, when E. S. Dudley, assistant
general superintendent of said railway company, approached him
and inquired if he, said affiant, had been notified that said Southern
Express Company could not, or would not, be allowed to forward
packages in sacks, to which the affiant replied that he had not been
so notified. Whereupon said Dudley said that his company, the St.
Louis, Iron Mountain and Southern Railway Company,
247 would not carry packages sacked or bulked in sacks (said
sacks containing a number of parcels, the sack being consigned
as one parcel to some one person), unless the Southern Express
Company allowed the St. L., I. M. and S. Railway Company

to make a scrip or written description of each package contained in each of said sacks, showing name of consignee, place of destination, &c., of each of said parcels. To this affiant replied that said Southern Express Company would not allow said St. L., I. M. and S. Railway Company to make or have such scrip or tally list of the parcels contained in said sacks. Said Ass't Gen'l Sup. Dudley then said said, sacks could not go in the car of said railway company, and proceeded to the car containing the express matter of the Southern Express Company, followed by me, the affiant, and
248 examined the marks on various sacks contained in said car, part of the express matter of said Southern Express Company, and said to this affiant that he (this affiant) would have to take said sacks out of the car. I refused to have the said sacks removed, and furthermore stated to him that said sacks were part of the express matter of said Southern Express Company placed in the said car for the purpose of being forwarded for its customers and patrons in the regular course of its business, and to be shipped as and in the condition in which they then were. That I protested against his action and that of the railway company represented by him, in refusing to carry and in threatening to put out of the car, and off the train, said packages, as illegal and in violation of the
249 rights of the said Southern Express Company; and I further informed him that if said sacks were removed by him they would be removed at his peril. Said Dudley then left the car, and immediately after returned, accompanied by two men, one white and the other a negro, train hands, as I supposed. Said Dudley and said two men then entered the said car containing said express matter, and put said sacks out of the car upon the platform.

Said sacks were marked and billed, and of the weights respectively below stated:

One (1) sack, 50 pounds, agent Southern Express Co., Poplar Bluff, Mo. Three (3) sacks, 300 pounds, agent Southern Express Co., Little Rock, Arkansas. One (1) sack, 27 pounds, agent Southern Express Company, Malvern, Arkansas. Two (2) sacks, 200 pounds,
250 agent Southern Express Company, Texarkana, Arkansas.

Said sacks which were thus put out of said car contained only express matter, which said Southern Express Company desired to carry on said train in the regular course of its business, and being thus put off, were not carried on said train, to the great prejudice and injury of said Southern Express Company and its customers and patrons. A few moments thereafter Col. A. W. Soper, general superintendent of said St. Louis, I. M. and Southern R'way Company, and R. C. Kerens, general manager of the express department of the said railway company, came to the express car in said train, containing the express matter of said Southern Express Company, and said R. C. Kerens then demanded of me that the package trunk, (which was in said express car, which said trunk is the prop-
251 erty of said express company, and contained packages consigned to various *pensions*, and was sealed and in the charge of the messenger of said Southern Express Company, and placed on said train in the regular course of their business as express for-

warders) should be opened, so that they would obtain a list of its contents, such as had been before demanded by said Dudley of the contents of said sacks. This demand was also refused by me, this affiant, under like protest and warning of its illegality to said Soper and Kerens. Said Dudley then recalled said two men, and he, said Dudley, with said two men, then and there acting under the orders and directions of said Soper and Kerens, put said package trunk off of said car on the platform, and refused to carry, and did not carry, the same on said car or 252 train. Said trunk thus put out of said car contained only express matter, which said Southern Express Company desired to carry on said train in the regular course of its business, and was thus put off, to the great injury, damage, and inconvenience of said Southern Express Company, and of its patrons and customers. Said package trunk was consigned to the agent of the Southern Express Company at Texarkana, Arkansas, and weighed 225 pounds. And all of the said action of said Dudley, Soper, Kerens, and the two men aiding them, by their direction, was done after full warning by this affiant that the same was illegal, in violation of the rights of the Southern Express Company, and done at their own peril.

This affiant was told at the time of his said action, by said Ass't Gen'l Superintendent Dudley, that the officers of the St. Louis, 253 Iron Mountain and Southern Express Company had determined upon this matter and intended to test their rights in the premises, claiming that they had a right to be allowed a list of the packages contained in the sacks, and in the packing trunk or chest aforesaid. Said General Manager R. C. Kerens at the same time said that they wanted the list of the contents of said sacks and said trunk or chest, so that they would be able to charge their express rate on each of the several parcels in them contained, separately. There were present in said car when the said sacks were put out of said car, W. F. Drew, messenger, and John Deament, porter, both in the employ of the said Southern Express Company, and said Dudley, ass't gen'l sup't, whith the two men above mentioned and one other person whose name is not known to affi- 254 ant, believed to be an employee of said railway company, and this affiant. There were present when said chest or trunk was put off the car as aforesaid, the same persons above mentioned, said Gen'l Sup't Soper, said General Manager Kerens, one Yoste, an express messenger of said St. L., I. M. and S. R'way Co. and others.

C. H. ALBRIGHT.

Subscribed and sworn to before me, this 17th day of July, 1880.

A. P. SELBY,
U. S. Commissioner.

255 *Affidavit of W. F. Drew.*

W. F. Drew, being first duly sworn, on his oath says: That he has read the foregoing affidavit of C. H. Albright carefully; that he is a messenger in the employ of the Southern Express Company on the St. L., I. M. & S. R'way Co.; that he is the same W. F. Drew who is therein mentioned as having been present at the time when the sacks and the packing trunk therein mentioned were put off the car by the said Dudley and his two assistants on the fourteenth (14th) day of July, A. D. 1880, at the depot in St. Louis, and that he witnessed the same, and was present during the whole time and saw said sacks and trunk put off said car, and heard the protests 256 and warnings therein stated to have been addressed by said Albright to said Dudley and others, and that the statements as to the same by said C. H. Albright, in his said affidavit, are, within the knowledge of this affiant, true.

Said sacks and packing trunk or chest were part of the express matter committed to him by said Southern Express Company as its messenger on that day, to be by him carried to destination and delivered, and which this affiant was by the means therein stated prevented from carrying, &c., as directed by his employers.

W. F. DREW.

Subscribed and sworn to before me, this 17th day of July, 1880.

A. P. SELBY,
U. S. Commissioner.

257 *Affidavit of J. B. Ragsdale.*

SOUTHERN EXPRESS COMPANY
vs.
THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

I, J. B. Ragsdale, agent of the Southern Express Company, Texarkana, Ark., being duly sworn, depose and state as follows: That as agent of the Southern Express Company, Texarkana, and I did receive from the express department of the St. Louis, Iron Mountain and Southern Railway Company certain express matter on the dates named below, which express matter was transported over the St. L., I. M. & S. Railway, by and through the express department of said railway company. And I do further certify that the 258 weights, description, address, and points from which originally shipped, as set opposite each and every parcel in the annexed list, is true and correct, both as to the words and figures. And I do further certify that when I received the said express matter, that I paid the charges for transportation as aforesaid, and as set forth in column "A" hereto annexed, and I do further certify that column "B" hereto annexed, shows and sets forth the printed tariff of the said express department of the said railroad company; and on the figures and charges assessed against and caused to be prepaid by the Southern Express Company for the transportation of express matter of like description and weight, and from like points.

And further, I do affirm that column "C" hereto annexed, 259 shows and sets forth a true and correct account of excess charged the Southern Express Company on the transportation of its own express matter carried in the custody of its own messengers over the line of the said St. Louis, Iron Mountain & Southern Railway Company.

Date rece'd.	Article.	Weight.	Description.	Address.	Destination.	Columns. A.	Columns. B.	Columns. C.
9 | 22 '80	1 pa	14	Mdse.	J. B. Denham	Shreveport, La	50	65	15
"	1 roll	30	"	Allen & B.	Paris, Tex	75	1 05	[illegible]
9 | 23, '80	1 pa	30	"	S. Zuckerman	Minneola, "	75	1 05	[illegible]
"	1 "	2	"	A. A. Green	Gainesville, "	15	30	15
"	1 "	5	"	A. P Brown	Jefferson, "	25	50	[illegible]
"	1 "	2	"	H. B. Harrison	McKinney, "	15	30	15
9 | 24, '80	1 "	4	"	J. F. Jenkins	Dallas, "	15	45	[illegible]
"	1 bale	5	"	H. F. Bailey	Marshall, "	25	50	25
"	1 pa	6	"	W. H. Cade	Rockdale, "	25	55	[illegible]
"	1 box	6	"	J. P. Hotchkiss	Ennis, "	25	55	20
9 | 25, '80	1 pa	6	"	C. Stove	Galveston, "	25	55	20
"	1 bx	3	"	Black & Co.	Wittspoint, "	15	35	20
9 | 26, '80	1 pa	8	"	S. Lawrence	San Antonio, "	50	60	10
"	1 "	2	"	D. B. Adams	Fort Worth, "	15	30	15
"	1 bale	20	"	T. C. Clay	Brenham, "	50	80	30
260								
"	1 pa	2	"	Q. C. Smith	Austin, "	15	30	15
9 | 27, '80	1 bale	18	"	H. W. Clevett	Oakwoods, "	50	80	20
"	1 pump.	10	"	Brigand & Co.	Susfutah, "	50	60	10
9 | 29, '80	2 cast'gs.	35	"	N. W. Reeves & Son	Collinsville, "	1 00	1 20	20
"	1 pa	2	"	G. A. Moffett	Marshall, "	15	30	15
"	1 bx	44	"	W. J. Stone	Gainesville, "	1 00	1 50	50
10 | 1, '80	1 pa	3	"	R. H. Wood	Willis, "	15	30	15
"	1 bx	11	"	Hines & S.	Clarkesville, "	50	65	15
"	1 cast'g.	7	"	J. Wilson	Whitesboro, "	25	55	20
10 | 2, '80	1 pa	2	"	J. Brown & B.	Paris, "	25	30	[illegible]
"	1 "	3	"	Abbott & D.	Fort Dover, "	15	35	[illegible]
"	1 bx	20	"	Dr. Hemstab	Sherman, "	50	80	[illegible]
"	1 p. bx	7	"	J. M. Vines	Jefferson, "	25	55	20
"	1 pa	9	"	A. Michaelson	Palestine, "	25	60	[illegible]
"	1 "	4	"	Moelne & Co.	Fort Worth, "	15	45	[illegible]
"	1 "	2	"	G. M. Dilley	Palestine, "	15	30	15
"	1 bx	15	"	W. George	Houston, "	50	65	15
"	1 pa	5	"	R. A. McKinney	La Grange, "	25	50	25
"	1 "	14	"	Z. Cleveland	Shrevep't, "	50	65	15
10 | 3	1 "	9	"	A. H. Splann	Clarksville, "	50	60	10
10 | 4	1 "	5	"	G. T. Boyce	Hempstead, "	25	50	25
"	1 "	6	"	T. A. Thompson	Jefferson, "	25	55	30
261								
"	1 bx	3	"	L. Rice	Victoria, "	25	35	10
"	1 "	45	"	M. P. Henessey	Galveston, "	1 00	1 25	25
"	1 pa	8	"	Mrs. T. Walker	Dallas, "	25	60	35

All of which was done to the great detriment and damage of the business of the said Southern Express Company.

THE UNITED STATES OF AMERICA,
The Eastern District of Texas:

Before me, the undersigned authority, personally appeared J. B. Ragsdale, to me well known, and who, after being by me first duly sworn, upon oath says the within and foregoing statement is true and correct.

J. B. RAGSDALE,
Ag't So. Ex. Co.

Sworn to and subscribed before me, this the 9th day of October, A. D. 1880.

H. D. H. BRENSING,
U. S. Com'r, E. D. T.

262 *Affidavit of Geo. W. Agee.*

In the Circuit Court of the United States for the Eastern District of Missouri.

SOUTHERN EXPRESS COMPANY
vs.
THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

George W. Agee, being duly sworn, on his oath, states: That he is route agent of the said Southern Express Company over the railway of defendant; that on the 5th day of October, 1880, there was received by said Southern Express Company, at Texarkana, from the Texas Express Company, a box weighing 154 pounds, addressed "R. S. McNiel, London, Tenn., which box was to be transported by said Southern Express Company from said Texarkana; that over the railroad of said defendant company to the city of Little Rock, 263 from which last point it would go over the route of another railroad, that said box was sent to the express car of the defendant railway company, then about to leave Texarkana for Little Rock, and in which car were the messengers of both the plaintiff company and the defendant company, and the officers and employees of said railroad company refused to allow said box to be put on said car; that said affiant, as agent of said plaintiff company, then and there applied to the officers of said railroad company in charge of the express department of said railroad to ship said box, at the same time offering to pay instantly to the railroad company its regular fare therefor from said Texarkana to Little Rock; said officer replied that he would not allow said box to be placed on or into the said cor, or transport the same over said railroad unless this 264 affiant opened said box and allowed him to see whether said box contained packages or not, to which this affiant, at the time, answered that he was not authorized to open the box, and refused so to do, and offered, at the same time, to make affidavit that said box contained no explosive or combustible matter. The defendant's officers still refusing to allow said box to go into the car, your affiant proceeded to have it put into said car and into the custody of the messenger of the said plaintiff company then on said car, but the officers of the defendant company, summoning sufficient force, then and there threw said box from said car, and would not receive it, nor allow it to be transported by said railroad, though your affiant offered to pay at once the freight therefor, and put their refusal distinctly on the ground that this af- 265 fiant would not open the box and allow the officers of said road to examine whether the box contained packages or not. Affiant then and there applied to Mr. Brown, the division superintendent of said defendant company, having his office at said Texaakana and informed said Brown of the facts above detailed and informing him of the anxiety of said plaintiff company to ship and forward said box to its destination without delay; requested him to order that it be done at once and then offered to pay to him or to the railway at once the freight upon the box that had been just put

off the car, and said Brown then said that he had nothing to do with
the matter but that the agent of the express department of defend-
ant company had orders from the company not to let the
266 Southern Express Company put aboard the cars of the com-
pany any box or boxes containing packages, and refused to
make any order in the matter. Said affiant further states that on
the morning of the 7th day of October, 1880, the agent of said com-
pany at Texarkana presented at the cars of said defendant for trans-
portation on said cars a box received by plaintiff from Alfred Har-
vey on the 6th day of October at Texarkana, weighing 96 pounds
and directed to himself at Oberlin, Ohio, and which said express
company ageeed with said Harvey to transport and deliver to him
at Oberlin, Ohio; that as a part of said route the said box was to
have been sent on the said railroad of defendant from said Tex-
arkana to Little Rock, where it was to go on the line of another
railroad. Upon the said box being presented to the proper
267 officers of said defendant company to be shipped and placed
on said car the said officers refused to allow said box to be
placed on board said cars to be so transported unless said box be
opened so as to allow an examination of said contents. This affiant
offered to pay to the officers of said railroad company, at the time,
the freight upon said box, but refused to open said box for the reason
then assigned that he had no authority to do so, and demanded
that said defendant company should receive said box fransportation
and transport the same, offering at the same time to make affidavit
that said box contained no explosive or combustible matter; that
upon said refusal this affiant had said box put upon said cars of
defendant's railroad and into the hands of the messenger of the
plaintiff, but the officers of defendant, summoning sufficient
268 force, threw the said box out of said cars; the said affiant
states that said box was shipped in the usual course of busi-
ness by said Harvey, who was a citizen of Texarkana, and was then
going to Oberlin, for college education there, and who came up on
the same train on his way to Oberlin upon which box was attempted
to be shipped. This affiant was on the same train, and was informed
by Harvey that said box contained bedding and other matter for
his personal comfort, and that so far as affiant knows or believes,
the statement of said Harvey was true, and said box contained noth-
ing but the articles above stated. Said affiant returned to said Tex-
arkana on the 12th October, and finding said box not shipped, again
applied to the proper officers of said railroad company on that
268½ day for the shipment of said box, and presented said box for
shipment and stated to them that the said box contained no
packages, and offered to make affidavit that said box contained no
explosive or combustible materials and at the same time offered
then and there to pay the freight upon said box; but said officers of
said railroad company again refused to allow the same to be placed
on said cars without this affiant would allow said box to be opened
and said contents examined, which this affiant declined to do.
Finding said railroad company would not permit said box to be
shipped on board of its cars, this affiant, as agent of said plaintiff

company, caused said box to be shipped by way of the Texas & Pacific railway to Dennison, and from Dennison, by Missouri, Kansas & Pacific railway and connecting routes, to St. Louis, 269 where it will be transported to Oberlin, being by a much longer and more expensive route, and requiring more time to reach its destination.

GEO. M. AGEE,
R. A., So. Ex. Co.

UNITED STATES OF AMERICA, *Eastern District of Missouri,* } *ss:*

Geo. W. Agee, being duly sworn, on his oath states, that the above statement by him subscribed is true.

A. P. SELBY,
U. S. Commissioner East'r Dis't, Mo.

270 *Affidavit of Gordon N. Briggs.*

UNITED STATES OF AMERICA, *Eastern District of Missouri:*

Gordon N. Briggs, being duly sworn, on his oath, says: I — employed by the St. Louis, Iron Mountain and Southern Railway Company on the 6th day of July, 1880. I was employed by it as scrip clerk in the express department of that railroad. My duty as scrip clerk was, among other things, to make a list each day of all express matter that the Southern Express Company carried by the St. Louis, Iron Mountain and Southern Railway Company from St. Louis. On the 14th day of July, 1880, I was informed by Mr. R. C. Kerens, manager of the express department of that railway company, that the Southern Express Company was in the habit 270½ of putting a number of small parcels into a sack or sacks and forwarding them as one parcel, and I was told by Mr. Kerens that this was not to be allowed in the future. I was directed by him at that time to demand from the employees of the Southern Express Company a list of all the packages or parcels contained in these sacks, so that I could scrip them; that is, make a full list of them by the names of their consignees, etc. I was directed by Mr. Kerens not to allow these sacks to go into the car unless I obtained this list of their contents. I demanded this information to enable me to make this list from that time forward on every run going out of that depot of the Southern Express Company; and it was given to me by them, but always under protest. This I continued to 271 do until the 10th day of October, 1880, when I left the employ of the railway company. The employees of the Southern Express Company gave me this information always under protest, I explaining that unlsss it was given the packages could not be carried. And further this deponent saith not.

GORDON N. BRIGGS.

Sworn and subscribed before me, this 18th day of October, 1880.

[SEAL.] MILLARD F. WATTS,
Notary Public, City of St. Louis, Mo.

UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

John R. Porter, being duly sworn, on his oath, says: I was employed by the St. Louis, Iron Mountain and Southern Railway Company on the 1st day of June, 1880, and was first employed as messenger for the express department of said railroad, and, on the 10th day of July, 1880, I was transferred and put at work as bill clerk; my duties as bill clerk were to make out bills for freight carried by the express department of said railroad and by the Southern Express Company on the said railroad. On the 14th day of
September last, Mr. James Aiken, the superintendent of the
273 express department of said railroad, informed me that Goulds
and Ostrander, of St. Louis, would send that day a shipment of iron to be carried by the express department of said railroad to Little Rock, Arkansas, consigned to the Little Rock Oil Company; and that I was to bill it and charge for it as of the weight of 2,240 pounds, whatever its weight might be.

Later in the day, the consignment of iron was taken to the depot by the wagons of the railway company's express from Goulds and Ostrander's, and the weights showed the iron weighed 3,225 pounds, and a roll of belting, which accompanied it, 120 pounds. According to the instructions of Mr. Aiken I billed this consignment, the bill being dated on the 15th day of September, one day later, according
to custom, at 2,240 pounds weight; the charge for it was
274 $44.80, that is, $2.00 per hundred, being the minimum rate
of freight on that class.

Deponent further says: Some time during the month of September, 1880, I think the first part of that month, William P. Vary, agent at St. Louis of the express department of said railroad, instructed me thereafter to bill all packages, except those shipped by the Southern Express Company, weighing from one to four pounds, to Texarkana, destined for Texas points, at fifteen cents, and to endorse on the margin of the bill that this rate was agreed; the rate thus charged was less by at least one-half on the average than the regular rates which were charged the Southern Express Company for their similar shipments. These instructions were obeyed by me, and
the lower rates thus directed was charged. About the same
275 time Mr. Vary, the St. Louis agent of the express department of said railroad, instructed me in the discharge of my duty as bill clerk, to make such reduction in the charges of the said railroad express upon express matter committed to them by the public to be sent to points beyond the end of its lines in Texas as would make the entire charge for transportation less than the through rate charged on similar matter by the Southern Express Company, and the effect of this instruction, which was obeyed by me, was that quite frequently the express department of the said railroad received nothing for carrying matter to Texarkana, because the local rate of the Texas Express from Texarkana to the point to

which the package was consigned was as great as the through
276 rate to that point of the Southern Express Company from St. Louis.

Further deponent saith not.

JNO. R. PORTER.

Subscribed and sworn to before me, this 20th day of October, 1880

[SEAL.] MILLARD F. WATTS,
Notary Public, City of St. Louis, Mo.

Affidavit of John Foley.

UNITED STATES OF AMERICA,
Eastern District of Missouri, } *ss:*

John Foley, being first duly sworn, on his oath, says: I have been in the employ of the Adams Express Company for many
277 years, and am engaged at the Union depot at St. Louis in the work of the Adams Express Company and of the Southern Express Company, and have been so engaged since the Southern Express Company's office was first established in this city. My duty, among other things, is to weigh the outgoing freight and call off the proceeds for entry on the way-bills going from the Union depot for the Southern Express Company over the line of the St. Louis, Iron Mountain and Southern Railway Company. My duty also is to call off the various parcels shipped as they are delivered to the messenger of the Southern Express Company on the car, and I have been so engaged at the Union depot for some time prior to this year, and constantly since that time, and am now so engaged.

On or about the 14th day of July last, and at the Southern
278 Express Company's office at the Union depot, I heard Mr. Vary, the agent of the express department of the St. Louis, Iron Mountain and Southern Railway Company, say to the scrip clerk of the said railway express department that he was to allow no more sacks containing various parcels to be shipped over the line of that railway by the Southern Express Company unless a list of their contents was given before they were shipped to the scrip clerk of said railway express department. Ever since that day and up to the present time, and now daily, such seeks addressed to the various points along and beyond the line of said railway have been and are offered to said railway by the Southern Express Compant for shipment; demand is invariably made for the list of the contents
279 as a condition on which alone they will be carried by said railroad company, and the list is given constantly by the Southern Express Company under protest. It is my duty to present these sacks, and I do it in person every day, and the demand is made of me and a list of the contents given by me under protest for the Southern Express Company. Under instructions I have asked the employees of the said railway company in every instance whether they would allow the sacks to go into the express car, and the reply, in one form and another, is always a refusal to allow it to come into the car, or a threat to throw it out of the car if it is put

in unless a list of the contents is first given. These sacks are always presented with a tag, showing the name [of] the consignee,
the place of consignment, and the weight of the contents. In
280 order to get a list of the contents I am obliged to open the
sack, take out the contents, and call them off separately to
the scrip clerk of said railway express department. I have in each case preserved these tags, on which has been marked by myself or others the date when they were offered for sale.

And further deponent saith not.

JOHN FOLEY.

Subscribed and sworn to before me, this 21st day of October, 1880.
[SEAL.] WILLARD F. WATTS,
Notary Public, City of St. Louis, Mo.

281 *Affidavit of T. A. Draper.*

I, T. A. Draper, agent of the Southern Express Co. at Poplar Bluff, Mo., being duly sworn, depose and state as follows: That as agent of the said Southern Express Co. at Poplar Bluff, Mo., I from time to time receive consignments of beer in kegs, in bottles packed in boxes, ice packed in sacks, and drugs packed in cans, shipped by the Southern Express Company through the hands of its messengers over the line of the St. Louis, Iron Mountain and Southern railway, and consigned to various parties at Poplar Bluff, Mo.; that when these kegs, bottles packed in boxes, sacks, and cans are emptied
of *of* their contents they are returned to their original ship-
282 pers; that where the original shipment is made by and
through its express department the said St. Louis, Iron Mountain and Southern Railway Co. habitually transports these returned empty kegs and other vessels aforesaid back to the original shipper free of any charge whatsoever, but that where these original shipments are made by and through the said Southern Express Company, and said empty vessels are being returned as aforesaid by the Southern Express Co., the said St. Louis, Iron Mountain & Southern Railway Co. causes to be assessed and requires to be paid before same are allowed to enter its cars charges, as shown in its regular tariff on merchandise, when sent by express, as shown herewith.

I further certify that the dates and articles as set forth below are
true and correct, and that the column marked "A," hereto
283 annexed, shows the true amount opposite each entry caused
to be paid by me by the said St. Louis, Iron Mountain & So. railway; all of which payments were in excess of the rates charged by them of any shipper where like articles were forward- by and through their express department:

Date sent.	Article.	Consignee.	Destination.	A. Amount collected.
July 22, '80	41 boxes empty bottles	H. Bruhan	Cairo, Ills.	75
" 21, "	21 empty kegs	do.	do.	6 20
Aug. 5, "	1 empty can	G. K. Hopkins & Co.	St. Louis	40
" 13, "	1 bal. empty sa*x*	H. Bruhan	Cairo	40
Sept. 6, "	1 empty can	G. K. Hopkins & Co.	St. Louis	40
" 12, "	1 " "	do.	do.	40
" 25, "	64 " kegs	H. Bruhan	Cairo	16 80
Oct. 2, "	2 bal. empty sacks	do.	do.	75
" 2, "	2 boxes empty bottles	do.	do.	
Sept. 21, "	1 empty can	C. R. Woodward	do.	25

All of which was done to the great detriment and damage of the business of the said Southern Express Company.

T. A. DRAPER.

284 Subscribed and sworn to before [me], this 18th day of October, 1880. My com-iss'n expires Oct. 26th, 1882.

[SEAL.] J. M. DAVIDSON,
Notary Public.

Affidavit of C. H. Albright.

In the Circuit Court of the United States, Eastern District of Missouri.

In the Matter of THE SOUTHERN EXPRESS COMPANY
vs.
THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY.

C. H. Albright, being first duly sworn, on his oath states:
285 That he is the agent of the said Southern Express Company
at the city of St. Louis, Mo., and that he did on the 18th day
of June, 1880, deliver to Colonel Thoroughman, attorney of record
of the St. Louis, Iron Mountain and Southern Railway Company, a
letter dated on said 18th day of June, 1880, a copy of which is
hereto attached, marked "Exhibit A," and signed by F. E. Whitfield and S. M. Breckenridge, solicitors for the Southern Express
Company.

C. H. ALBRIGHT.

Subscribed and sworn to before me, this (20th) twentieth day of October, 1880.

[SEAL.] WILLARD F. WATTS,
Notary Public, City of St. Louis, Mo.

EXHIBIT A.

ST. LOUIS, *June 18th*, 1880.

Messrs. THOROUGHMAN & PIKE,
Att's of the St. L., I. M. & S. R. R. Co., St. Louis, Mo.

286 GENTLEMEN: In order to guard against any misunderstanding
of the proposition made by us in behalf of the Southern Express Co. several days since, and again to-day, we now desire to repeat that proposition, which we do in order to exhaust all effort to avoid unnecessary collision and troublesome litigation. We propose, pending the adjustment of rates, being unable to agree with you as to what are reasonable rates, as required by the order of the U. S. C. court in the case now pending between The Southern Express Co. & The St. Louis, Iron Mountain & Southern R. R. Co., and without prejudice to the claims or rights of either party, to pay to your company ($190) one hundred and ninety dollars per day, stipulating
with you that if, on the final hearing or according to any in-
287 termediate order of the court in fixing rates for the carriage
of express matter and messengers, this amount of $190 be found in excess of what was due to you, you will refund the excess to us, and that if in the same way it shall be found to be less than was due to you, we will immediately pay to you the deficiency.

We shall not ask of you any security for the repayment to us of this possible excess, and we are willing and now offer, to give you security for the payment by us to you of the possible deficiency, in any form and to any amount that can be reasonably asked, in either bond with security or in negotiable security or cash, to be deposited as may be agreed.

We are willing, and now propose, either to pay this sum of $190
daily, deducting therefrom what we are now paying daily for
288 messenger's fares (which is about $60), or to pay the $190,
and to cease paying, pending the adjustment of rates, the daily fares of messengers. We are willing to make the arrangement date from June 2nd, inclusive. This amount of $190 is proposed by us because it is the amount formerly existing under contract between us, and can, therefor-, as we believe, be used as a basis for transaction of our business, pending the litigation, without waiver of any right by either of us.

Or, if this proposition is not satisfactory to you, then, as an alternative, we propose to adopt, pending this litigation, and subject to the final adjustment of rates in the case pending between our companies, the rates which were agreed upon between the St. Louis, I. M. & Southern R. R. Company and the Mississippi Valley Express
Company; our information being that a tariff of rates was
289 agreed upon between the St. L., I. M. & S. R. R. Co., and an
organization incorporated, or proposed to be incorporated, known as the Mississippi Valley Express Company, a few days before the litigation between our companies, now pending, began.

This contract having been recently made by your company, must, as we suppose, be a fair expression of the opinion of the authorities of the St. L., I. M. & S. R. R. Co. as to what are reasonable rates, and

and since February, 1879, I have been employed as manager at the Union depot warehouse for the Adams and the Southern Express Companies. It is part of my duty to see that the runs of express matter for the Southern Express Company are properly shipped from the Union depot on the trains of the St. Louis, Iron Mountain and Southern Railway Company, and it has been so during the whole time of my employment there since the 14th day of July last. The employees of the St. Louis, Iron Mountain and Southern Railway Company, acting under instructions from their officers, as they informed me, and as some of the officers themselves informed me, have required the Southern Express Company employees to furnish to them a list of the contents of sacks or packages offered containing
298 parcels shipped by that road; and they have refused constantly to carry such sacks or packages unless the contents thereof were thus given to them in detail. In many instances this list of the contents of these sacks so offered and refused, except upon this condition, has been furnished by myself, and in other cases by those employed at the office of the Southern Express Company, and acting under my instructions for the company I have preserved and now have in my possession the shipping tags which were attached to these sacks and packages when offered to the St. Louis, Iron Mountain and Southern Railway Company for shipment, and which contained the name of the consignee, place of consignment, and date of shipment, and weight. Some of them may have been mislaid, but I have nearly all of them in my
299 possession. In all cases the Southern Express Company has given this list of the contents of packages thus demanded under protest, only complying with the demand because otherwise the packages would not have been carried; and this demand for the list of contents of packages, and refusal to carry unless it was given, and protest by the Southern Express Company against this demand, have been persisted in since the 14th day of July last until the present time, and are now daily persisted in. This demand was never made before the 14th day of July, 1880, and I have not known of its having been made of any other express company heretofore. The Southern Express Company constantly receives express matter from Little Rock, Texarkana, and other points on and south of
300 the line of the St. Louis, Iron Mountain and Southern Railway Company for shipment to Philadelphia, New York, and other eastern points. On such shipments the Southern Express Company pays to the Adams Express Company from St. Louis last its proportionally agreed part of the freight money. It constantly happens that the employees of the express department of the St. Louis, Iron Mountain and Southern Railway Company apply to me, representing the Adams Express Company, at the depot, to get a lower rate on articles which they wish to ship by the Adams Express Company last coming over their express to this point, explaining to me that as they brought these articles from the point of shipment at a lower rate than the Southern Express Company charges for the whole distance over that route, that unless the Adams Express
301 Company will reduce its regular rate, the express depart-

ment of the St. Louis, Iron Mountain and Southern Railway Company will get either very small compensation or none at all for its services, and much less than they regularly charge the Southern Express Company for the same service. This has been stated to me constantly by the employees of the railway express department, chiefly by Mr. Valentine, who is the depot agent of the express department of the St. Louis, Iron Mountain and Southern Railway Company; and he exhibits to me from time to time his transfer book, which exhibits to me the exact figures in each instance which that express department receives for its services in carrying such shipment over its line, which is constantly less than the amount demanded for the same service from the Southern Express
302 Company. In this way it happens constantly, as thus explained to me by Mr. Valentine, that parcels upon which the Southern Express Company is required to pay the express department of the St. Louis, Iron Mountain and Southern Railway Company fifty cents, for instance, the said railway express department carries same distance for others for twenty-five cents, or less. And further this deponent saith not.

G. C. ARNOUX.

Sworn to and subscribed before me, this 21st day of December, 1880.

[SEAL.] MILLARD F. WATTS,
Notary Public, City of St. Louis, Mo.

303 On the 25th day of October, A. D. 1880, the following affidavits were filed in said cause, to wit:

Affidavit of Charles Mendenhall.

Charles Mendenhall, being duly sworn, on his oath says:

My name is Charles Mendenhall; I am 39 years old, and am superintendent of the express department of the Ohio and Mississippi railway. I have been superintendent about eighteen months, and have been in the department since its organization, about two years and a half. The Adams Express Co. formerly occupied the main line of our road, but quit its business on the road about
304 September 1, 1877. It had been running on the road under contract. We have always had more or less trouble with the transfer of our freight to the Iron Mountain railroad at St. Louis, notwithstanding our time was quicker than that of other companies, and the transfer, therefore, being made with more certainty. In order to drive our freight to other companies, and hence away from the Iron Monntain road, our transfers were held here twenty-four hours, and this in spite of repeated remonstrances on our part and assurances from the agent of the Southern Express Co. that it would not be so held. The agent of the Southern Express finally admitted that he was powerless in the matter; that their express was controlled by the Adams Express, and that the Adams demanded the delay.

The agent of the Adams Express Co. sent out notices to
305 shippers by us, at Cincinnati and elsewhere, stating that
matter shipped by our express was delayed at St. Lous, subject to overcharges, &c., and directing them not to ship by our line if they wished to make speed, &c. Out of many instances I can state one particularly. We received a shipment at the office in Cincinnati for a point in Texas, and gave to the shippers the regular rate from Cincinnati to the point in Texas. Mr. Weir, the agent of the Adams Express Co. at Cincinnati, came in with Mr. Fisher, the superintendent of the Southern Express Co., and in a most violent manner stated that he would not only have the goods delayed in St. Louis, but that he would also have them overcharged at the point of destination, because they were not shipped by the Adams
Express Co. from Cincinnati. The goods were overcharged
306 at their destination. The shipper at Cincinnati was very
angoy. We refunded him the overcharge, and it was a long time before we were able to get the refund back from the Southern Express Co. This occurred about six months ago, and is one that I remember of many such occurrences, which were frequent. The rates charged by us were exactly the same as those charged by the Adams and Southern to Texas.

The whole course of the Southern Express towards us at St. Louis was so arbitrary and discriminating that I was compelled to order all our shipments for Little Rock, &c., *via* Memphis, although our interest, both as to time and distance hauled, was to ship *via* St. Louis. Finding that remonstrances to the Southern Express of no
avail, I appealed to Superintendent Soper, hoping that he
307 might be able to have this discrimination and delay stopped,
but found that he was not able to control it, no attention having been paid to his orders on the subject. A very large amount of freight from Baltimore, Pittsburg, Chillicothe, Cincinnati, and other large points was therefore sent to Memphis (as we could not stand the delay at St. Louis), all of which ought to have passed over the Iron Mountain road, and would have passed over the Iron Mountain road had it not been for this discrimination.

I have frequently applied to Mr. Fisher, the superintendent of the Southern Express, for a tariff sheet containing their rates, classifications, regulations, &c., and, although repeatedly promised me, they were never furnished. I have seen their tariff, however, which I
regard as exorbitantly high, and made neither in the interest
308 of the shippers nor in that of the railroad company, and
which differs in many essential respects from that of other express companies doing business in equally hazardous territory.

There was no reason for this delay in transferring at St. Louis, except a desire to force business into the hands of the Adams Express Co., as we had more time for transferring than they had.

Since we have been running the express department of the railroad we have materially refused the rates on express matter. We have never lost a single package of money or merchandise, except as may have been damaged by accident. Our business is steadily and largely increasing, showing it is satisfactory

to the shipping public. The revenue to the company has been nearly, if not quite, double that paid us when
309 the Adams Express Co. did the express business on the road.

For instance, I have the following figures, taken from the auditor's books on the 26th of May, 1880, showing express freights during the Adams *regime* and our own. For the six months ending April, 1877, the Adams and American, which did all the business on the road, paid us $25,226.78; for the six months ending April 30th, 1880, the net profits of the express department after deducting all expenses, and besides that, paying for a large amount of personal property, (which is not included in these profits), were $49,889.94. I will say further, that our expenses for these last six months were heavier than they have been since we started, because as I stated before, a large amount of personal property, such as fitting
310 up the office at St. Louis, purchasing new burglar-proof safes, wagons, &c., was directly charged to the express department as expense. Were these taken as assets of the company, which they are, fully $4,000 would be added to the net earnings. Unless I am very much disappointed in our express earnings for the ensuing year, they will net at least $10,000 a month. I will state again, that our express rates are much lower than when the road was operated by the Adams, and our express facilities are much better than when operated by the Adams, because we run matter on every train, and because every employé on the train is interested in, and directly ordered to look after, the careful handling of the express matter, the delivery of empties, &c.

The express department of our road in no way interferes
311 with the efficiency of the other departments. In fact it is rather an aid to them, for the reason there is no jarring or quarreling between express messengers and baggage masters in the car, or between the agents along the line, as all are working for the common good of the railroad company.

I know that the plan of a railroad operating its own express is very popular with the public, and indirectly adds to the other business of the road. For instance, we frequently run across matters which parties do not wish to ship by express, and we are enabled from that knowledge to secure it for our freight department. This frequently happens in shipments on live stock and general merchandize.

CHARLES MENDENHALL.

Subscribed and sworn to before me, in the city of St. Louis, this 28th day of May, 1880.

[SEAL.]

JAMES F. ALLEN,
Notary Public, City of St Louis.

312 *Affidavits of J. W. Piercey, F. P. Laws, W. B. Clark.*

BULEE, — 25, '80.

STATE OF ARK., *County of White:*

We, the undersigned, make an affidavit that the Southern Express Company, with their excessive, arbitrary, high rates, has injured our fruit business, viz., that we can't ship only at such times as prices of fruit in St. Louis market will allow us to do so. Messrs. Laws, Clark, & Carter was at horticultural meeting at Judsonia; heard officers of said express Co. promise that they would reduce the rates for 313 us, but failed to comply with same; that said rate has, to some extent, retarded emigration to our town and county. Again, the Southern Express compels shippers to sign a release of fruit shipped from here, releasing express company from any loss or damage to same.

J. W. PIERCEY.
F. P. LAWS.
W. B. CLARK.

STATE OF ARKANSAS, *County of White:*

Sworn to and subscribed before me, this 25 day of May, 1880.
[SEAL.] J. M. BATTLE,
Notary Public.

314 *Affidavit of Milton H. Smith.*

SOUTHERN EXPRESS COMPANY
vs.
ST. LOUIS, IRON MOUNTAIN & SOUTHERN R'Y CO.

STATE OF MISSOURI, } *ss:*
City of St. Louis, }

Milton H. Smith, being duly sworn, upon his oath states: That his name is Milton H. Smith, and that he resides in Baltimore, Maryland, and is general freight agent of the Baltimore & Ohio Railroad Company; that he has been general freight agent of said road since February 1st, 1879, and was general freight agent of the Louisville & Nashville road for nearly 10 years prior to that time; that since Nov. 1st, 1878, until now he has had the general supervision 315 of the express business of the Baltimore and Ohio Railroad Company, and that since said road does its own express business, and that no other express company does a general business on the said road. Affiant further states that he is familiar with the charges usually made by express companies, and that he has examined the tariff charges of the express department of the St. Louis, Iron Mountain & Southern R'w. Co., and also the recent tariffs of the Southern Express Company, used by them up to a short time since over the same line. Affiant further states that the tariff as used by the express department of the Iron Mountain road is reasonable, and less than the tariff heretofore used by the said Southern Express Company. Affiant further states that it is custom- 316 ary for express companies to exact the same charges for the transportation of property delivered to them by shippers at the express warehouses or shipping depots, and delivered to consignees at delivery depots or express warehouses, as is charged for transportation of similar traffic taken from store door and delivered at store or place of business of consignee, and that so far as affiant know- is the custon of the Southern Express Company. Affiant

further states that the express companies exact the same rates from the express department of the Baltimore & Ohio Railroad Co. upon traffic transported from Columbus to Cincinnati, Ohio, as they do on traffic of other shippers. Affiant further states that the Adams Express Company are are at present exacting the same rates for transportation from Baltimore to Philadelphia and New York,
317 upon property delivered to them by the express dep't of the B.
& O. R. R. Co., as they exact from similar traffic between the same points from other shippers, notwithstanding the fact that the express dep't of the B. & O. R. R. Co. delivers its freight at the shipping depot of the Adams Express Co. in Baltimore.

MILTON H. SMITH.

Sworn to and subscribed before me, on this fourteenth day of June, A. D. 1880. Commission expires June 5, 1881.

[SEAL.] GUS. A. WURDEMAN,
Notary Public, City of St. Louis, Mo.

318 *Affidavit of A. W. Soper.*

In the Circuit Court of the United States for the Missouri —.

SOUTHERN EXPRESS COMPANY
vs.
— & SOUTHERN RAILWAY CO.

A. W. Soper, being duly sworn on his oath, deposes and says:

My name is A. W. Soper; I am general superintendent of the St. Louis, Iron Mountain & Southern Railway Company, and have been such for nearly ten years; I have been engaged in railroad business for twenty-five years; I am familiar with the manner of conducting express business on the St. Louis, Iron Mountain & Southern railway, and am familiar with the tariff rate of charges made to the public by our express department. From my
319 railroad experience I will say that this tariff is reasonable.
It was based upon the former tariff over this railway used by the Southern Express Company, and reductions were made upon it from 25 to 50 per cent., so that it is smaller than the public was ever served at before, and is more satisfactory to the entire community along the line of the railway through the States of Arkansas and Missouri. We have extended to the Southern Express Company, since the granting of the injunction, the same facilities we have to any shippers.

With reference to the transportation of property presented by the Southern Express Company, we gave instructions to the subordinate officers of the road to have the order of court strictly followed, which was to use them the same as other shippers, and to treat them the same in all respects. We temporarily gave them the addi-
320 tional advantage of allowing their messengers to ride in the
express car in charge of the freight that they had to ship.

I have not issued any pass or passes, or suffered them to be issued to any person, to induce such person to send freight over the express department of the St. Louis, Iron Mountain & Southern railway with the object of injuring or in any way interfering with the facilities of the Southern Express Company, and I know of no passes being issued for such purpose. We always issue more or less passes upon various accounts in the transportation department, as well as from the freight department, when it seems for the best interests of the corporation, whether the pass be issued to a shipper, newspaper man, or to whomsoever it may be, when in the best judgment of the company it will tend to the best good and prosperity of the 321 railway. We have a manager and superintendent of the express department, who attends to all the details of the express upon this line; they have, as I say, all the details of this business to attend to, and my instructions to those officers, in the transaction of their department, has been repeatedly and strictly to conform in all things to the order of the court made in granting the injunction, and to be specially careful to treat the Southern Express Company just as they treated every other shipper upon this road. The matter of charges having been fixed after the granting of the injunction, as I have stated, was made less than the Southern Express Company had theretofore charged, but I was informed and believe that instead of those charges being in violation of the injunction, they were clearly within its permission. The charges theretofore made 322 by the Southern Express Compony were so high that they practically excluded from transportation many articles that, after the tariff had been fixed, would come to market, and by keeping them out of the market, retard emigration and advancement of the country along the line of our road.

A. W. SOPER.

Subscribed and sworn to before me, this 25th October, 1880.

[SEAL.] L. L. WALBRIDGE,
Notary Public.

Affidavit of P. Nichols.

I, P. Nichols, being a shipper by the Southern Express 323 Company, do make complaints as follows, to wit: The said expsess company have charged me excessive and ruinous rates for carrying my produce to market, and that they have, by their high charges and general management, retarded emigration and injured the fruit growing and other interests of this country, to the detriment of the St. Louis, Iron Mountain & Southern railway.

P. NICHOLS.

Subscribed and sworn to before me, this May the 26th, 1880.

[SEAL.] W. S. BROWN,
N. P., Austin, Ark.

324 *Affidavit of W. R. Allen.*

In the Circuit Court of the United States for the Eastern District of Missouri.

SOUTHERN EXPRESS COMPANY
vs
ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.

W. R. Allen, being duly sworn, on his oath deposes and says:

My name is W. R. Allen; age, 33; am second vice-president of the St. Louis, Iron Mountain & Southern Railway Company. Since some time in June, I don't remember the date exactly, I have been the active managing officer of this railway and the acting president. The officers of this railway who have power to issue passes are the president, vice-presidents, general superintendent, and the
325 assistant superintendent. The president of the railway company has been absent from the city most of the time since about the middle of last June until now.

As the managing officer of this railway I have not, since June, either directly or indirectly, issued any passes to any persons or shippers over this railway for the purpose of affecting the Southern Express Company and depriving it of its influence and business upon this railway. I do not know of any other officer having authority to issue passes having issued them for any such purpose. No such suggestion ever came to my mind. This is the first I ever heard of that proposition. Almost constantly since last June I have given my personal attention to the management and operation of the railway. I have not tried to obstruct the business of the
326 Southern Express Company since the granting of the injunction in this cause in any way at all. They have been given all the facilities that we had. We were interested in having them get as much business as they could over our railway. The officers and agents of this railway have sought advice so that they might conform in the course of business between the express department of this railway and the Southern Express Company to the letter and spirit of the court granted in this case.

W. R. ALLEN.

Subscribed and sworn to before me, this 25th day of October, 1880.
[SEAL.] J. W. WALLACE,
Notary Public, City of St. Louis.

327 *Affidavit of John P. Smith.*

STATE OF ARKANSAS, *County of Lonoke, Town of Cabot:*

I, John P. Smith, state upon oath as follows: My name is John P. Smith; my age, 48 years; my occupation, farmer and fruit-grower. I would ship fruit, produce, &c., if the express charges was not so terrible high and outrageous; am satisfied it is a draw-back to the improvement of the country, and pray for reasonable rates; my *my perlition* is against the Southern Express Company and for the improvement of rates, &c.

JOHN P. SMITH.

Sworn to and subscribed before me, this 26th day of May, 1880.

[SEAL.] T. E. HENDRICKS, *N. P.*,
Notary Public.

328 *Affidavit of James Aikin.*

In the Circuit Court of ths United States for the Eastern District of Missouri.

SOUTHERN EXPRESS COMPANY
vs.
THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.

James Aikin, being duly sworn, upon his oath, says: My name is James Aikin; am forty-eight years of age; residence now in St. Louis; am superintendent of the express department of the St. Louis, Iron Mountain & Southern Railway Company, with headquarters in St. Louis; am familiar with the entire line of my department of business.

When informed that the injunction in this case had been granted I sought advice from the counsel of the St. Louis, Iron Mountain
& Southern Railway Company as to the provisions of the
329 injunction, and was advised that the Southern Express Com-
pany must have extended to it all the rights, facilities, and privileges that were accorded to anybody, even to the express department of the St. Louis, Iron Mountain & Southern Railway Company itself, and thereupon I went to work and extend to the Southern Express Company even greater facilities to the transportation of their freight and goods than I took to myself, or than I extended to anybody else, being specially desirous of keeping within what I was told was the order of the court granting the injunction. I have at different times issued circulars to the employés of this department, directing them to be particularly careful in their management of the business to not cause delay to the freight offered by said Southern Express Company. Furthermore, I have also urged upon
330 employés to be careful and not charge the Southern Express
Company in any instance any more than any other shipper was charged. The rate for which the express department of the St. Louis, Iron Mountain & Southern Railway Company is now serving the public is a large percentage less than that charged by the Southern Express Company for the same kind of service before the issuance of the injunction.

From my experience and actual connection with the business upon the St. Louis, Iron [Mountain] & Southern Railway Company, and in view of the increase of business in the express department, one hundred and ninety-five dollars per day would simply be no adequate compensation at all for the services rendered to the Southern Express Company.

Soon after the granting of said injunction and the conformity
therewith, the express department of the St. Louis, Iron
331 Mountain & Southern railway did make a new rate of
charges for its express service, which rate of charges was, and
was intended to be, much less for the Southern Express Company and all patrons of the road, than said Southern Express Company had therotofore made or charged, which rate was made so low as to compensate for or include any accessorial service that might be performed by the Southern Express Company or anybody else, which tariff is now in force; and I will say in this connection, that were it not for the obstacles and improper interference, the St. Louis, Iron Mountain & Southern Railway Company, could and would make a still less rate of charge for the kind of service under consideration.

There has never been any demand made upon me for any abatement for any services rendered by the plaintiff for the defendant in
any behalf whatever. They never demanded of me a rebate
332 or allowance in consideration of any accessorial service. In
my experience of twenty years in the express service, I have
never known of any express company making an allowance to any patron for goods brought to the office or taken from the office, but the tariff is the same when the company has received goods at the door of the shipper and delivered them to the door of the assignee, as when shipper brings his parcels or other goods to the office of the express company, or when consignee receives them at the office of the company. From my knowledge of the business, I believe that usage is universal.

For a period of four weeks after the granting of this injunction, the express department of the St. Louis, Iron Mountain & Southern
Railway Company did not demand prepayment of the
333 Southern Express Company for services rendered them. The
bill for services rendered amounted to something over ($6,000)
six thousand dollars, and I sought advice of the counsel of the railway company in regard to the collection of said amount. Under their advice, I proposed to exact prepayment for services rendered, which said counsel said I had a right to do under the law. On or about the time prepayment was exacted, said Southern Express Company commenced putting their packages in sacks and boxes, which they had not done before. Then, in order that I might know what risks the railway company was asuming, I asked the employés of said Southern Express Company to tell me what articles these boxes and sacks contained, which they declined to do, and under the advice of counsel I gave instructions to the employés of this
express department to refuse said boxes and sacks admission
334 to the car, unless the employés of said Southern Express
Company disclosed contents of said boxes and sacks, which
counsel said I had a right to do.

The railway company has never ejected any box, trunks, package, or other property of the Southern Express Company where the messengers of said company have given the contents or told the agents of the railway company what was in such box or trunk, nor when

the agents of the Southern Express Company have tendered prepay-
ment when they disclose the contents. In one case where they had
attempted to get packages over the line of the railway without pay-
ing at all, I put them off. I have no knowledge of their ever being
ejected from any building of their own, or which they were occupy-
ing under lease. My instructions have invariably been to
335 not deviate from the tariff without giving the Southern Ex-
press Company the benefit of any such deviation, if any ; I
have instructed employés to be careful and not charge the Southern Express Company any more for the same service than was charged any other person, and I have no knowledge that my instructions ever have been violated, and do not believe that they have without censure and orders from me it must not be repeated. I have never procured to be issued, nor issued, nor directed that there be issued, any pass or passes to any express company or persons for the purpose of diverting custom from the Southern Express Company or injuring its business.

From my knowledge, acquired in twenty years' experience in the
express business, I believe the schedule of rates which the ex-
336 press department of the St. Louis, Iron Mountain & Southern
Railway Company is charging the public and the Southern
Express Company to be reasonable and just.

In presenting the bills against the Southern Express Company for payment, I have almost invariably told their representative to whom they were presented that in the hurry of business we were liable to commit mistakes, but if there were any mistakes in those bills, if he would call my attention to any overcharge, or undercharge, or mistake of any kind, we always held ourselves in readiness to rectify any such mistake at once when our attention was called to them ; and I will say further, that in my intercourse with those gentlemen I don't think they ever made a complaint of an overcharge to them on the part of the express department, either in weight or in money, that
has not been corrected.

337 I have seen the affidavit of Mr. John R. Porter now on file
in this cause, referring to a shipment of freight consigned to
Little Rock by Messrs. Gould & Ostrander of this city, and in explanation desire to say we would gladly make a similar reduction to the Southern Express Company or any other shipper on a similar quantity of the same class of freight if offered under like circumstances; that during the time since June 1st, we have carried for the Southern Express Company more than ten times that weight of freight of a higher classification at a greater reduction in weight and at a rate per 100 lbs. more than 30 per cent. less than was charged for this.

With reference to way-billing packages at a rate less than would
be charged by the Southern Express Company, so far as Mr.
338 Porter's statement implies that such way-billing was done other-
wise than in violation of my repeated instructions in regard
to this class of business, or that it was done in obedience to instructions from any one authorized to direct in the matter, it is wholly and completely false. During the latter part of Mr. Porter's service

in this department it was intimated that he was acting in the interest of the Southern Express Company, and so transacting his business as to make up a case for them. About this time I was informed by our auditor, Mr. Clark, that packages were being way-billed by Porter at rates less than tariff. I immediately asked of him an explanation of the matter, at the same time requesting him to account for moneys belonging to the department that had passed into his
hands in the transaction of his business connected therewith.
339 He said he could give no explanation for the said way-billing
or the defalcation further than this, that he had been so
much under the influence of strong drink during the preceding si months that he had no clear recollection of what he had done, and hoped I would not hold him accountable for his acts during that time, acknowledging that he had disobeyed his instructions, and was criminally liable for misappropriating the funds of this department. I thereupon at once discharged him, together with the agent, Mr. Vary, to whom he refers in his affidavit.

JAS. AIKIN.

Subscribed and sworn to before me, this 25th day of October, 1880.
[SEAL.] J. W. WALLACE,
Notary Public, City of St. Louis.

340 *Affidavit of Thomas Allen.*

In the Circuit Court of the United States for the Eastern District of Missouri. In Equity.

THE SOUTHERN EXPRESS COMPANY
vs.
THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

I, Thomas Allen, being duly sworn according to law, do depose and say: That I am president of the corporation defendant, and have been its president since its consolidation in 1874. That previous to said consolidation I was president of the Cairo & Fulton
railroad of Arkansas, and of the Cairo, Arkansas & Texas
341 railroad, and of the St. Louis & Iron Mountain Railroad
Company, and of the latter as far back as 1868. That the St. L. & I. M. R. R. transported packages on passenger trains, as express freight, previous to its execution of a contract with Adams Express Co., for which service a higher charge was made than for carrying freight on ordinary freight trains; and that this service was performed to the satisfaction apparently of every body concerned. That subsequently, viz., on the 30th April, 1872, the said Co. made a contract with the Adams Express Co., and subsequently, viz., Feb. 1st, 1874, a contract with the Southern Express Co. was made by the C. & F., & the C., A. & F. R. R. Co. That these contracts were made at the solicitation of the said express companies. That the said Southern Express Co. agreed to pay a larger price for its accommodations than were paid by the Adams Express Co., and did
342 so. That the business of the railroad has largely increased

in all its departments since this contract was made, and this deponent has reason to believe, and does believe, that the express business done upon the St. L., I. M. & S. Railway by the said Southern Express Co. has, since that contract was made, largely increased both in volume and in profit. That this deponent hath at various times called the attention of the superintendent of the railroad to this, and suggested the propriety of increased compensation to be paid by the said express Co., but this deponent hath been assured that the said express Co. was not doing a sufficient business to justify it in increasing the compensation to the railroad, and the railroad company hath not been able to obtain an increase of pay from said express Co. This deponent is informed and believes that the compensation paid by said express Co. to the railroad
343 Co. is inadequate and insufficient, and that the business done by said express Co. over and upon the said St. L., I. M. & S. railroad hath been highly profitable to the said express Co. That this deponent is informed and believes that the said express company has not dealt justly and fairly with the said railway company; that it hath smuggled goods on said railway without weighing the same, and without any accounting therefor to the said railway Co., and that it has underbilled the weights of goods, and instructed its agents to defraud the said railroad company by entering in way bills weights of goods less than the real weights, and that in order to avoid payment of the excess of weights stipulated in the contract, it hath sent goods by other routes where it had contracts requiring payment by the space occupied, and that it hath discrimi-
344 nated in favor of or against certain parties at various times, greatly to the injury of the R. R. company; and that it hath made such excessive charges on certain descriptions of freight offered for transportation as to discourage the shippers thereof; and that it is not true, as stated in the complainant's bill, that the property of the St. L., I. M. & S. Railway Co. is mortgaged for over $30,000,000. (See paragraph 21.) That it is not true, as stated in the said complainant's bill, that the St. L., I. M. & S. Railway Co. hath entered into a combination and confederation with the Louisville & Nashville R. R., or their representatives, or with any other railroad company, or with the representatives of any other R. R. Co., to destroy the business of the complainant, and of the Adams Express Co., but that it has, of its own notion and in the interest of
345 its stockholders, availed itself of a provision in the contract to terminate the same, well knowing that there is no more reason or necessity for the services of the Southern Express Company in the matter of transportation of fast freight, small packages, and so-called express matter, than there is for its services in the transportation of any other freight of the said railroad company. And this affiant further saith that the said express company both retained the services of the station agents and freight clerks of the railroad company, and used the station houses and furniture of the railroad company, and by these means had the opportunity, which this affiant believes has been availed of to a large extent, to tempt and persuade the railroad company's agent to divert a large amount of freight

from the railroad company's regular freight trains into the
346 charge of the said express company, to the manifest injury and
loss of the stockholders of the railroad Co. This affiant further saith that he has not at any time proposed or threatened to exclude any freight or passengers which the said express company may desire to go over said railroad, but, on the contrary, both expressly notified the said express Co. in his note of May 15th (see page 25 of complainant's bill) that the railroad company "will receive, transport, and deliver any express matter" which the said express Co. may intrust to the said railway company.

This affiant further states that he apprehends and believes that the said Southern Express Company has sought and obtained a monopoly in the express business on the St. L., I. M. & S. Railway
lines by entering into combinations and agreements with
347 other express companies by which such other express companies have been excluded from the use of the trains of the St. L., I. M. & S. Railway Co., and that if encouraged or permitted to do so it will continue to injure the business and reduce the receipts of the said railway company.

THO. ALLEN.

Subscribed and sworn to before me, this first day of June, 1880.

J. W. WALLACE, [SEAL.]
Notary Public, City of St. Louis, Mo.

348 *Affidavit of E. L. Dudley.*

In the Circuit Court of the United States for the Eastern District of Missouri.

SOUTHERN EXPRESS COMPANY
vs.
THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.

E. L. Dudley, being duly sworn, upon his oath deposes and says:

My name is E. L. Dudley; am 35 years of age, and am assistant general superintendent of the St. Louis, Iron Mountain & Southern Railway Company; have held such position since March, 1880; have been connected with the St. Louis, Iron Mountain & Southern Railway and the Iron Mountain in all capacities for thirteen years; am familiar with its management and operation. About the 14th day of July,
1880, I was at Union Depot, in the city of St. Louis, morning
349 train, and found in sacks and boxes packages for different parties marked to the agent at Little Rock and Texarkana, Arks. I asked the agent of the Southern Express Company, Mr. Albright, to give me a list of the contents of those packages, or open them and show them, in order that we might get a statement of the packages and the consignees and the value. He declined to do this, and I told him that we should be obliged to refuse to carry the goods unless he did so, my object being to get the value of the goods so as to know how to charge. Still refusing to comply with my request, after considerable parley and my repeatedly telling him what I would have to do if he

did not give me that list, I had the packages removed from the car and carefully placed on the platform at the Union Depot;
350 after this the packages were no longer put up in that shape, but were sent as other freight, each package separately, and the issue has never come up again. We have had no further trouble upon that score. This is the only case that I know anything about where goods were set out. In virtue of my officer I have the power of issuing passes to persons. The general superintendent, president, and vice-presidents of the St. Louis, Iron Mountain & Southern Railway Company also have that power. I do not remember of ever having issued at any time a pass or passes to anybody in consideration of their sending express matter over the St. Louis, Iron Mountain & Southern railway. I do not know, of my own knowledge, of any of the other officers, who have authority to issue passes, issuing any pass or passes for that purpose. I
351 keep a record of the passes issued in my office. To my knowledge there has been no act or acts of discrimination in the charges against the Southern Express Company. The tariff and charges against said company are the same as against any one else, and said company pays the same as other people. There has been no discrimination against them in reference to the charges against them and paid by them. The messengers of the Southern Express Company have been treated in just the same manner that every one else has been, and the facilities and privileges accorded to every one else have been accorded to them. This matter is as much under my observation as of any other officer of the road. The policy of the railroad company has been to get business, and not to drive it away, and in order that we might build up our trade we have
352 extended to the Southern Express Company the same and every facility that we have extended to other persons in like business.

E. L. DUDLEY.

Subscribed and sworn to before me, this 25th of October, 1880.
[SEAL.] L. L. WALBRIDGE,
Notary Public, City of St. Louis.

Affidavit of W. R. Carter.

STATE OF ARKANSAS, *County of White:*

I, W. R. Carter, state upon oath as follows: My name is W.
353 R. Carter, of lawful age; reside at N. Y.; occupation is nurseryman and fruit grower; state that Southern Express Company with their excessive arbitrary high rates has injured our fruit business; we can't ship only at such times as prices of fruit in St. Louis market will allow us to do so; that myself, Mr. Laws, and Clark, was at the horticultural meeting at Judsonia, Ark.; officers of said Southern Ex. Company promised us to reduce their rates on fruit to St. Louis; that they did not comply with their promise, and did not reduce their rates; that these high rates has retarded emigration to our town and county to a great extent; that not only paying high

figures but compels shippers to sign a release exonerating said company from any loss to damage on same.

W. R. CARTER.

Sworn to and subscribed before me, a notary public, this 26 day of May, 1880.

[SEALS.] J. M BATTLE,
Notary Public.

Affidavits.

In the Circuit Court of the United States for the Eastern District of Missouri.

THE SOUTHERN EXPRESS COMPANY, Plaintiff,
vs.
THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Defendant.
} In Equity.

354 *Affidavit of John F. Hynes.*

John F. Hynes, being duly sworn, upon his oath says: That for more than nine years prior to May, 1874, he was engaged as porter, weigh master, and freight clerk at the city of St. Louis, in the State of Missouri; that as such porter, weigh master, and freight clerk, he was familiar with the management of the business of said express company in the shipping de-
355 partment thereof; that the practice of said plaintiff almost invariably was to report to said defendant less weight than was actually carried by them; that in case of carrying kegs of beer that would weigh from 94 to 96 pounds each they would report but 75 pounds to the defendant; that in many cases where packages would weigh 40 or 50 pounds no report at all would be made to the defendant of such packages, and in one instance he knows of several hundred of packages of almanacs shipped by Dr. J. H. McLean by said express company over the Iron Mountain railroad, some of which weighed forty pounds, none of which were reported to the railroad company; that he knows of other cases where there was fresh poultry and eggs that were not correctly weighed and reported to the defendant, and also knows of cases where fresh fish
356 was shipped by express over the Iron Mountain railroad, and not correctly weighed and reported to the defendant; that this was the custom of their dealing during the time he was with them as freight clerk; that in the course of his connection with the plaintiff the amounts thus failed to be correctly weighed and reported to the defendant would amount to many thousand of pounds, which he could make a fair estimate of had he the books of the express company now before him. He also knows of instances of dead bodies being brought over said railroad by express, of which there would be no weight reported to the railroad company at all. Beer in kegs was one of the principal articles handled by the express company along the line of the Iron Mountain railroad during his employment, and there was not much of it shipped south of
357 the terminus of that road.

JOHN F. HYNES.

Subscribed and sworn to before me, in the city of St. Louis, this 27th day of May, 1880.

[SEAL.] JAS. F. ALLEN,
Notary Public, City of St. Louis.

Affidavit of Samuel Mount.

Samuel Mount, being duly sworn, on his oath, says:

My name is Samuel Mount; I am 47 years old; I have been with the Adams and the Southern Express Company thirteen years; I began with them as check clerk right after the war; I took charge of 358 the freight department; from there they made me money receiving clerk, and from there I was money night clerk, and from that made cashier. This was in the city of St. Louis. I ceased my connection with them abont 1876. I am now solicitor for the O. & M. and Pacific Express Companies, at 419 N. 5th street. When I was connected with the Southern and Adams Express Companies I was familiar with their mode of doing business. Three or four months ago I was connected with the O. & M. Express Company, and at the depot where we received all our freights we tendered our express matter bound South to the Southern Express Co., between 7 and 8 o'clock in the morning, in ample time for them to have way-billed and forwarded it, and they refused to receive it 359 and forward it, to the detrimont of the shippers and consignees. This was every day that they thus acted for about a month. We did not only ask them to receive and forward it, but we made a tender of the freight within the hours above named, and without any good excuse on their part they refused to take our freight and forward it. The delay thus occasioned would be from 12 to 24 hours. This, to my mind, seemed to be a discrimination against freight from Cincinnati more particularly than against freight from any other point. G. C. Arnold, who was in charge of the freight office of the Southern Express Co., said he would be a pretty fool to send our Cincinnati freight forward because it was a common point between the O. & M. and Adams, we both running there.

SAM. MOUNT.

Subscribed and sworn to before me, in the city of St. Louis, this 27th day of May, 1880.

[SEAL.] JAS. F. ALLEN,
Notary Public.

360 *Affidavit of W. F. Yost.*

W. F. Yost, being duly sworn, on his oath says: That he is now 37 years old, and is at present in office of the coal oil inspector of this city; that he was formerly connected with the Adams and Southern Express Companies, and ceased his connection with them about a year ago; that he was in the employ of the Southern Express Co. about one year as messenger on the road; that the duties of a messenger were to receive all freights, give a receipt for them,

and deliver them in the same condition as received to the consignee and take a receipt for them; that he knew about the business habits of the Southern Express Co. in regard to its reporting less weight to the Iron Mountain Railroad Co. than it absolutely carried;
361 that it was on the item of beer; that an ordinary keg of beer would average in weight about 100 pounds, and that in cases of that sort the express company would report to the Iron Mountain Railroad Co. on their way-bills 65 pounds for the keg when it averaged 100 pounds, and that if he had the books of the express company, and had time to look over them, he could tell approximately how much there was carried by that company which it reported at less weight than it really was; that this beer would come from the regular office, regularly way-billed at the weights given above; that he could not give a guess at the number of thousand pounds of beer so reported short, but that there were a great many thousand pounds; that as express messenger he had carried as many as 50 or 60 kegs of beer at a time on said railroad; that beer was
362 one of the principal articles in weight carried by the express company in the summer time south on the local run over the Iron Mountain railroad, and that some of it went below the Iron Mountain railroad; that he had now no connection with the Southern Express Company.

W. F. YOST.

Subscribed and sworn to before me, in the city of St. Louis, this 27th day of May, 1880.

[SEAL.] JAS. F. ALLEN,
Notary Public, City of St. Louis.

Affidavit of W. T. LeMaster.

W. T. LeMaster, being duly sworn, on his oath says:
363 I am twenty-seven years old. I live in De Soto, Jefferson county, Mo., and am baggage master for the Iron Mountain Railroad Company, and express messenger for the Southern Express Co. on the De Soto accommodation train. I have been in the employment for the Southern Express Company for four months, and am familiar with its mode of doing business, and am familiar with the articles generally sent in charge of the express messengers over the Iron Mountain Railroad. They carry all kinds of express packages, and, among others, beer in kegs. The beer carried by me as above stated I billed at sixty-five pounds to the keg, and could, by referring to my books, tell the number of kegs of beer that I have thus billed. I would not like to make a guess even at the number of kegs of beer I have billed in this way, but could give the
364 information definately if I had the books to refer to. Beer is one of the principal articles carried by the express company and there is hardly a trip made but what beer is carried by them.

W. T. LeMASTER.

Subscribed and sworn to before me, in the city of St. Louis, this 27th day of May, 1880.

[SEAL.] JAMES F. ALLEN,
Notary Public, City of St. Louis.

Affidavit of Joseph Temple.

Joseph Temple, being duly sworn, upon his oath says:

I am 42 years old and in St. Louis. I was connected with 365 the Adams Express Co., which did the Southern Express Co.'s business over the St. Louis & Iron Mountain railway. I was connected with it for almost 20 years up to the 15th day of December, 1879. I was manager of the Union Depot freight office. I am now the joint agent of the Ohio & Mississippi and Pacific Express Co.'s. When I commenced here as agent for the Pacific and Ohio & Mississippi I took the freight that was here in the morning up to within half an hour before the trains carrying their freight left and tendered it to them to send South over the St. Louis, Iron Mountain & Southern railway with their freight and they refused point blank to send it along. They would not send freight for us that came from the East to make better time than their own freight.

After that I tendered to them the freight referred to between 366 seven and eight o'clock in the morning, which was ample time to have got it off on the trains, and they refused absolutely to forward it then, giving as a reason that they did not intend that our freight should go in advance of their own. They forwarded their freight, but would not forward ours. Our freight, which they refused to forward, arrived in the city an hour before their freight, which they received and forwarded. The freight thus refused *or as* from Cincinnati, a point where my express company competed with theirs for business. This refusal was calculated to injure our business and the business of the consignee and consignor of such freight. Their conduct injured our business and worked an injury to the business of the defendant by lessening the freight carried by it. I will say that complaints were received at Cincinnati of delays 367 in St. Louis of 24 hours on express matter that was to go over the Iron Mountain road by reason of the discrimination made by the Southern Express Co. against the Ohio & Mississippi Express Co. This discrimination has been continued by the Southern Express Co. as long as I have been connected with the Ohio & Mississippi and Pacific Express Co.'s. It has been a persistent effort to break down the business of the last named companies. I continued tendering the freight as I have mentioned every day for more than a month, meeting with the same refusal on every occasion, when I abandoned all hopes for a time of getting justice for my companies at the hands of the Southern Express Co. I tried it again a few weeks ago and met with the same continued refusal. The effect of this course of dealing of that express company [is] this, that 368 people shipping general merchandize over the Iron Mountain road from Cincinnati, finding that express matter was thus delayed would seek other routes of commerce for their goods, and it would in that way work a damage to the defendant by depriving it from carrying the freight from that direction, as well as the express matter, that would otherwise go over its road. From my knowledge of express business, I will say that, in my opinion, a railroad company can transact an express business in connection with its freight and passenger departments with as much convenience, expedition, and safety to the interests of the public, and even more so, as any express company can the same business and with a profit to the railroad company transacting such business, that there would be saved to the public by a railroad company carrying its own 369 express matter the expenses of the middleman. I am now connected with the Ohio & Mississippi Railroad Co. in its express department, which is successfully and profitably carrying on that business with no complaints being made against them from any quarter for the transaction of an express business. The public seem to be better satisfied, because our rates are less the Southern Express Company's rates are, and the business is done with as much promptness and dispatch. When talking to the Southern Express agent, Mr. Albright, in regard to this transfer matter, he said that if he had his way he would receive the freight and send it along, but that I knew how he stood, that he had to do as the Adams Express people instructed him.

370 *Affidavit of R. C. Kerens.*

In the Circuit Court of the United States for the Eastern District of Missouri.

SOUTHERN EXPRESS COMPANY
vs.
THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.

Richard C. Kerens, being duly sworn, upon his oath deposes and says:

My name is Richard C. Kerens; I am manager of the express department of the St. Louis, Iron Mountain & Southern Railway Company; I remember the occasion of the issuance of the injunction in this suit, and I understand the force and meaning of the order granted by Judge Treat. I was present at the court when the order was made, and heard all the arguments *pro* and *con*, and understood the full force and effect of the injunction. As manager 371 of the express department of the St. Louis, Iron Mountain & Southern Railway we have offered no facilities at all to the public that have not been accorded to the Southern Express Company. In fact, we were very particular and careful to grant them every facility that we had ourselves, or that we accorded to the public in every particular—more, if such a thing were possible. Not one single pass over the St. Louis, Iron Mountain & Southern Railway has been issued to my knowledge to influence business in express matters or to injure the Southern Express Company. In regard to the general course of business, we have shown a disposition to treat the public fairly, and what business we have has naturally come to us. We have studied a great deal about the tariff that we should adopt, and have given it thorough 372 thought and consideration, and the tariff on every article has been reasonable, both for the patrons of the express company and the railway company. We have reduced on many articles

considerably below what the Southern Express Company has been in the habit of charging, and have always accorded them the same rates. If we reduce the rate upon any article we immediately accord the Southern Express Company the same rate. Of course, everybody understands that the tariff on express matter carried by a passenger train is worth at least 50 per cent. more than to carry such goods on a freight train. We have been guided by that consideration in arranging our tariff. The people throughout the whole country that we serve, the entire line of the road, are well satisfied
373 with the tariff, and say that it is reasonable, and they appreciate our efforts to give them facilities at the prices we do. I have never heard any complaints about *are* tariff; on the contrary, we have been complimented on its reasonableness. Shippers, merchants, and others have said to me that it was a great relief to the community; that the Southern Express had kept up its war tariff, and the people felt oppressed by the outrageous tariff that they maintained. We did not reduce our tariff below what was for a fair compensation.

I am perfectly familiar with the transportation business, and have handled express matters for years; I know all about it, as I have been carrying it on my own line of stage coaches; there is not a single instance where we have ever charged the Southern Express Company any different from what we have charged the public, and I have time and again instructed our agents and the
374 superintendent of our express department to be very careful, and never to make any reduction of the tariff without giving the Southern Express Company the benefit of such reduction, and I don't remember that any such thing has ever been done to my knowledge.

I have been fully conscious of the fact that we were dealing with the Southern Express Company under the injunction of the United States court, and therefore was very careful, and I believe now that I have suffered frauds to be perpetrated upon the railway company rather than have trouble with the Southern Express Company, because of my regard for the injunction we were under. I call to mind now one instance where the Southern Express Company had a box prepared which I suspected to contain small valuable
375 packages, and in fact the gentleman who tallied at the depot told me that he thought it did contain small valuable packages. I asked the agent of the Southern Express Company to state whether it did contain such packages or not, as I wished to ascertain the contents; he declined to do so, and said that it was no business of the railway company what any box contained. He would not state the contents of the box, but pulled out money and offered to prepay for this particular package to the end of our road, at the same time challenging me, as it were, to refuse, and taunted me that I dare not refuse to accept it. This, I am satisfied, was an injustice to the railway, and a fraud perpetrated upon it, but I suffered it for the sake of having no trouble in consequence of the injunction which we were strictly obeying. This box afterward was traced to
376 its destination and was found to contain small valuable

packages, and the lid of the box was afterwards returned to us. All this parade was done evidently to provoke, and was premeditated, for the whole thing involved only a couple of dollars.

RICHARD C. KERENS.

Subscribed and sworn to before me, this 25th day of Oct., 1880.

A. P. SELBY,
U. S. Commissioner.

377 *Affidavit of Myron M. Clarke.*

In the Circuit Court of the United States for the —— Missouri.

SOUTHERN EXPRESS COMPANY
vs.
— & SOUTHERN RAILWAY CO.

Myron M. Clarke, being duly sworn, on his oath says:

My name is Myron M. Clarke; age, 34; residence, St. Louis; I am the auditor of the express department of the St. Louis, Iron Mountain & Southern Railway Company, and have held such office since the 4th of August last. Mr. James Aiken is the superintendent of the express department, and I got my instructions from him.

My duties are auditing the accounts of the express depart-
378 ment and inspecting the work of every employé as it comes to
my department. The instructions from the superintendent to me with reference to correcting errors of overcharges, where the charges are not enough, and where I find that mistakes have been made and our tariff rates have been disregarded, I make them to conform to the tariff rates, and call the attention of the persons committing the error and demand of him that they be made correct. In the multiplicity of our business errors have occurred for and against our department. In cases where I find that overcharges have been made in the hurry of business, or from any other inadvertency, my instructions are, when these errors are ascertained, to refund the overcharge to the corporation or person entitled to it, and where insufficient charges have been made to demand to pay for
the discrepancy. Errors of this kind have occurred which I
379 have discovered, and wherever discovered I have directed the
mistakes to be rectified, and I have been instructed to be specially careful in my intercourse with the Southern Express Company to see that they are accorded all and every privilege accorded to any other patron.

MYRON M. CLARK.

Subscribed and sworn to before me, this 25th day of October, 1880.

[SEAL.] J. W. WALLACE,
Notary Public, City of St. Louis.

380 The following affidavits were filed in said cause, to wit:

Affidavit of James W. Brown.

In the Circuit Court of the United States for the Eastern District of Missouri.

SOUTHERN EXPRESS COMPANY
vs.
THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.

James W. Brown, being duly sworn, upon his oath says:

My name is James W. Brown; residence, Texarkana, Ark's; 43 years of age; I hold the position of superintendent of the Texas division of the St. Louis, Iron Mountain & Southern Railway Company; have been in that office eight months. I was standing on the platform of the depot at Texarkana, Ark's, on or 381 about the 14th of June, 1880, when the agents of the Southern Express Company offered for carriage to the St. Louis, Iron Mountain & Southern Railway Company certain sacks consigned to Memphis, Tennessee. I was on the platform when these sacks were offered and when the agents of said Southern Express Co. tried to put said sacks in the express car. Said sacks were refused, and from their appearance I could see that they contained packages. The agent of the express department of the St. Louis, Iron Mountain & Southern Railway refused to take said sacks, because they contained packages, unless the agents of said Southern Express Company would give said agent of the express department of the St. Louis, Iron Mountain & Southern Railway Company a list of the contents of said sacks, or open them, so that he, the said 382 agent, could make a list and ascertain the value of the contents of said sacks so that he might make a reasonable charge for the service and carriage that was to be bestowed upon the contents of said sacks by the St. Louis & Iron Mountain & Southern Railway Company. Said agent said to the agents of the said Southern Express Company that he would carry the said packages, if said agents would give him the lists thereof.

I was present at the office of the St. Louis, Iron Mountain & Southern Railway Company, in Texarkana, Ark's, on or about the 5th of October, 1880, when a box was presented to the agent of the express department of the said railway company by the agents of the said Southern Express Company for transportation, which box was refused to be accepted by the agent of said railway company, he stating to the agents of the said Southern Express Company that he 383 supposed said box contained packages, and that he wanted said agents to open said box to show that it did not contain packages. Said agents refused to open it, and tried to force it into the car. Said agent of the said railway company said, in refusing to receive said box, that he must know the contents thereof so that he could make a reasonable charge for the services that were to be bestowed upon it by said railway company, and which responsibility the railway company was incurring by the receipt of the said box. Said box was presented for three mornings to the said railway agent after the date of the *repeal* aforesaid, and was refused in my presence, by the said agent, for the reasons he had before given.

Said railway agent refusing to receive said box for the reasons
384 above given, namely, that the agents of the said Southern
Express Company would not furnish him with a list of the contents of said box, nor the value of such contents, nor open the box, the agents of the Southern Express Company refused to open the box before the train started, but said that they would open it after the train started and show him the contents. Then in my hearing, the railway agent told the Southern Express Company's agent that if they would even tell him the contents of the box, he would take their word for it, and it might go, which they declined to do. They sullenly and persistently refused to tell him by intimation, or word, what the box contained, but presented it from day to day for several days, urging that the agent of the railway company should accept it just as it was. The box about which I
385 am speaking is the same box mentioned by Mr. Agee in his
affidavit, which is on file in this case.

I know of one instance where a packing case or trunk was offered by the agents of the Southern Express Company for transportation and was refused by the agent of the raid railway company. Said express company's agent refused to open said packing case or trunk before the train started, but they did open it after the train started, when it was found to be full of watermelons. I will say that from my observation of the conduct of the express business of the Southern Express Company with the express department of the said railway company, there has been a disposition on the part of said Southern Express Company to make factious objections, and to make everything unpleasant, and to offer things in an unusual way
386 in order to bring up a point or question. I have not seen
any disposition on the part of any employees of the said railway company to hinder the Southern Express Company in the transaction of their business, only to demand what I understood the legal rights of said railway company to be.

It is the custom, and has been ever since the starting of the express department of the St. Louis, Iron Mountain & Southern Railway Co., to hold over for twenty-four hours at Texarkana all south-bound express matter, except perishable matter, carried to that place by said railway company. Said Southern Express Co. would, as before stated, receive perishable matter only and ship it through on the day of its receipt from the said railway company, but all other matter so received they would purposely delay twenty-four
387 hours, receiving it through the day and shipping it the next
morning. I have seen such matter brought back and held over in the express office time and again.

JAMES W. BROWN.

Subscribed and sworn to before me, this 23rd day of October, 1880.

[SEAL.]

J. W. WALLACE,
Notary Public, City of St. Louis.

Affidavit of L. A. Fuller.

L. A. Fuller, of lawful age, being duly sworn, on his oath says:

I am superintendent of the Pacific Express Co. I have 388 been in the express business for about twenty-six years, and am familiar with that business in all its details. It is part of my business to make tariffs for the Pacific Express Co. I know and understand what is meant in this case by the rate fixed by the St. Louis, Iron Mountain and Southern Express department, and the express department of the Memphis and Little Rock Railroad upon packed parcels of valuable packages, and safes, and boxes containing currency, which is called in this case the three and six rate. Where shippers refuse to disclose the value of such packed parcels and the value of the contents of such safes and treasure boxes, I consider such rates reasonable and fair; in such case I certainly should not make a less rate for my own company. In making a tariff on safes, knowing that they contain money, and the 389 shippers refusing to disclose the value, I would not make a rate less than six times merchandize rate.

And further deponent saith not.

L. A. FULLER.

Subscribed and sworn to before me, a duly commissioned notary public in and for the city of St. Louis, in the State of Missouri, this 6th day of June, A. D. 1881.

[SEAL.] JAMES HOLLAND,
Notary Public, City of St. Louis.

390 *Affidavit of S. A. Westbrook.*

STATE OF ARKANSAS, *White County:*

I, S. A. Westbrook, make oath and say, that I am of lawful age; reside at Buke, Ark.; by occupation, a farmer and fruit grower; and make oath that the Southern Express Company, with their excessive, arbitrary high rates, has injured my fruit business, viz: that I cannot ship fruit only at such times as prices for fruit in the St. Louis market will allow me to do so; that I believe that said rates has to some extent retarded emigration to our town and county. Again, that said company compels shippers to sign a release for fruit shipped from here (before giving r-ceipts for same), releasing 391 said company from any loss or damage to same.

S. A. WESTBROOK.

Sworn to and subscribed before me, a duly commissioned and acting notary public, this 26th dap of May, 1880.

[SEAL.] J. M. BATTLE,
Notary Public.

Affidavit of James Aikin.

James Aikin, of lawful age, being duly sworn, on his oath says: I am superintendent of the express department of the St. Louis,

392 Iron Mountain & Southern Railway Co., and of the Memphis & Little Rock Railroad Co. I have read the supplemental petition and the answer in this case. The statements of the answer in regard to all details of the business of the express departments of those companies are true in every respect. I have also read the affidavits made by Mr. H. C. Fisher, superintendent of the Southern Express Company, and his short-hand clerk, whose name I do not now recall. On the 11th day of November, 1880, as superintendent of the express department of the companies named, I established the three and six rates mentioned in the supplemental petition; those rates continued and were paid by the complainant up to about the 17th day of February, 1881, when the complainant applied to the circuit court of the United States for the district of West
393 Tennessee, at Memphis, and obtained an injunction, which injunction fixed the rates of charges. I went to Memphis the last of February, and that injunction being still in force, though somewhat modified, I, on the 3d day of March, 1881, called at the office of the Southern Express Company, in Memphis, and there had a conversation with Mr. Fisher, the superintendent of the Southern Express Company, relative to rates to be charged upon their sacks of packed parcels and safes of money, and to the manner in which the business shall be done. After that conversation, and while still in his office, I prepared the draft of a letter to be addressed to my agents instructing them as to the agreement then made with Mr. Fisher. I submitted that draft to Mr. Fisher and asked him if it was in accordance with the spirit of our agreement; he an-
394 swered, that it was. I then asked him to have his clerk write it, which he did. I then asked him to take a letter-press copy of it in his impression book, which he did. I remarked at the time that I was glad to find something we could do in the business upon which we could both agree, and further, that there might be no misunderstanding, I asked him to have a number of copies of that letter prepared by his own clerk, to the end that I might sign them and send them to my agents. He did so, and the letter exhibited with the answer to the supplemental petition is one of the letters so prepared at that time, on the letter-head of the Southern Express Company. I append to this affidavit another copy of the same letter which the court will see is in the same handwriting, and upon a similar
395 letter-head, and mark this copy "Exhibit 1 to Mr. Atkin's affidavit." I left Memphis believing the agreement would be carried out in good faith. To my astonishment, I found that in a few days, and less than a week, the messengers of the complainant were violating the agreement, both by not taking receipts and by distributing from the safes and packed parcels while in transit. The injunction granted by Judge Baxter still being in existence, I submitted; but upon the 16th day of April, 1881, that injunction was dissolved, and I immediately re-established the three and six rate. This rate was first established because the complainant refused to give any account of the value of valuable packages transported by them of such packed parcels, money boxes, and safes, and it was re-established because they violated the agreement of the 3d of

396 March, and also refused to give account of value. I have been in the express business for nearly twenty years, and I consider the rates perfectly fair, because the complainant may place its safe packages at a value of $100,000, and by concealing that value compel the defendant to transport such packages without compensation, and subject to the risk of being compelled to pay damages for their loss. I have repeatedly offered the representatives of the Southern Express Company, in lieu of this tariff of three and six rates, if they would disclose the aggregate value of the contents of sacks and safes to charge thereon as we would any other shipper; but they persistently and continuously decline- to give this value, and for that reason I enforce- this tariff that we may receive
397 compensation for the risks assumed in transit. I have not asked, and I do not ask, the number of packages or the address of the packages contained in the safes or packed parcels; all I have asked is to know the aggregate value, and I was willing to charge upon that the regular prices charged by us to other shippers for the same character of packages. I am and have always been willing to carry for the Southern Express Company in the same manner and upon the same terms that the defendant carries for any other shipper, and to give it any advantage in rates which is given by defendant in its express department to any other express company or any express department of any railroad company. And futher deponent saith not.

JAS. AIKIN.

398 Subscribed and sworn to before me, a duly commissioned notary public in and for the city of St. Louis, in the State of Missouri, this 6th day of June, A. D. 1881.

[SEAL.] JAMES HOLLAND,
Notary Public City of St. Louis.

EXHIBIT 1.

SOUTHERN EXPRESS COMPANY,
OFFICE OF DIVISION SUPERINTENDENT,
MEMPHIS, TENN., *March* 3, 1881.

C. H. AIKEN, *Agent, St. Louis.*

DEAR SIR: I have agreed with Sup't Fisher that on and after receipt of this letter their safes and sacks of valuables, packages, shall be transported as ordinary merchandise, providing their
399 agents shall accept our ordinary form of receipt for the same, and they shall not be distributed from while in transit.

Yours, respt.,

JAS. AIKIN,
Sup't I. M. Ex.

P. S. Give rec'ts for safes and sacks in every instance. J. A.

400 *Affidavit of E. K. Sibley.*

E. K. Sibley, of lawful age, being duly sworn, on his oath, says: I am the general manager of the Memphis and Little Rock Railroad Co. I have read the supplemental petition filed by the Southern Express Co. and the answer of the defendant thereto. The statements of the supplemental petition to the effect that the St. Louis, Iron Mountain and Southern Railway Co. and the Memphis and Little Rock Railroad Co. are under the same management, and to the effect that the express departments of those two companies are practically conducted as one company, are untrue, and the statements and explanations of the answer in regard thereto are strictly true in every respect.

401 I further say that I have been engaged in the business of railroading for eleven years, most of which time I was engaged in the freight department; that the statement of the petition undertaking to give the cost of the transportation per ton per mile of freight has been read by me, and I have to say, as the result of my experience, that I am confident no man living can tell what is the cost to any given railroad for the transportation of freight per ton per mile; the statements in the answer in regard to this, that the cost varies upon different roads and upon the same road from day to day are true. I was not present when the agreement was made between James Aikin and Superintendent Fisher, but was informed of it by Mr. Aikin within a few hours after it was made. On the evening of the same day Mr. Aikin brought to me one of the
402 letters, which are now produced, and stated to me that that letter contained the agreement, and that it had been written by one of the clerks of the Southern Express Co. in the presence of, and had been submitted to and approved by, Mr. Fisher. As stated by Mr. Aikin, at the time that agreement was made the injunction granted by Judge Baxter was in force, having only been slightly modified. In the last of March, I think about the 29th, the defendant applied to the circuit court of the United States for the district of West Tennessee to arrange and fix rates pending that injunction. Judge Hammond refused to do so, but ordered that we should apply to Judge Baxter within fifteen days, and that in the meantime the defendant might charge the Southern Express Co. its customary charges to other shippers, a copy of which order I hereto ap-
403 pend, which is marked "Exhibit 1 to Mr. Sibley's Affidavit." On the 12th of April I received from H. C. Fisher, superintendent of the Southern Express Co., the dispatch attached hereto, and marked "Exhibit 2 to Mr. Sibley's Affidavit," which dispatch satisfied me that Mr. Fisher did not consider the agreement of March 3d as having any force, but that he was relying upon the injunction granted by Judge Baxter; consequently, when the injunction was dissolved, I ratified Mr. Aikin's action in re-establishing the old rates.

Referring again to the statement in the petition as to the cost of transporting freight, while an approximation might be made of the cost of hauling large lots of freight, it would be impossible to even approximate the cost of hauling small packages of express freight, such as are handled by express companies usually, such
404 freight being transported in small lots, and seldom in quantities reaching one ton; as, for instance, if but a single pack-

age were delivered at a particular depot upon only one day, the cost of that package to the company, although weighing perhaps but a pound, might be four or five dollars. The Southern Express Co. never give the defendant large amounts of freight to any one depot on the line, except, perhaps, Little Rock or Memphis, and it is utterly impossible to say what is the cost of transacting their local business. All estimates of the cost of transporting freight made by railroad companies are approximate, and made upon a consideration of their total business, and it would be utterly impossible to separate the express business from the other freight business of the railroad, 405 and to say what would be the cost of transporting such express matter, that being, to a large extent, a parcel business. All estimates heretofore made by railroads of the cost of their transportation of freight have been for freight transported upon their freight trains, while that of the Southern Express Co. is transported upon passenger trains, and the cost of transportation upon passenger trains is much greater than on freight trains.

And further deponent saith not.

E. K. SIBLEY.

Subscribed and sworn to before me, a duly commissioned notary public in and for the city of St. Louis, in the State of Missouri, this 6th day of June, A. D. 1881.

[SEAL.] JAMES HOLLAND,
Notary Public, City of St. Louis.

406 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee:

In the Circuit Court of the United States within and for the Western Division of the Western District, in the Sixth Judicial Circuit thereof.

Proceedings had in said court, at a regular term thereof, begun and held for its November term, A. D. 1880, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 29th day of March, A. D. 1881, in the following cause, to wit:

SOUTHERN EXPRESS COMPANY, Plaintiff,
vs.
THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY (as reorganized), Defendant.
} No. 358.

407 On this day comes the complainant, by Whitefield, Tinley, and Gillham, its counsel, and the defendant, by Brown, Morgan, and Weatherford, its counsel, and the defendant presents its application to the court to fix the compensation which it may charge and collect of complainant for carriage of freight, &c., for it, and in other matters to regulate the business between complainant and defendant; which motion was argued, and the same involving questions as to the proper construction of the injunction hereinbefore granted by Hon. John Baxter, and the court not being advised as to the proper construction of said order, it is ordered

that the defendant, within 15-days from date, present its said application and such other motions or petitions as it may be advised or
necessary to Hon. John Baxter for adjudication, and in the
408 meantime it is ordered that the defendant may charge and
receive from complainant its regular tariff rates upon such separate packages as are tendered by complainant to defendant for carriage, so, however, as that defendant shall not charge complainant greater rates than it charges others, nor discriminate against complainant in any way. It is also ordered that complainant, in packing parcels for shipment, may not include in such package parcels intended for delivery at different points, but in packing parcels those only shall be included as are shipped by complainant from one point to another point, and that no such parcel may be opened or its arrangement or marks changed while in transportation on defendant's road. And it is further ordered that defendant keep an accurate
account of all moneys received from complainant, and report
409 the amount to this court when it may be required to do so,
and obey all orders of the court in regard to such moneys.

THE UNITED STATES OF AMERICA,
Sixth Circuit and District of West Tennessee:

I, Bell W. Etheridge, clerk of the circuit court of the United States for said district of West Tennessee, do hereby certify that the paper hereto attached is a full, true, perfect, and correct copy of the original decree in said court as the same now appears of record and upon the files in my office in the following cause, to wit, So. Ex. Company *vs.* M. & L. R. R. R. Co.

In testimony whereof, I have hereunto set my name and affixed
the seal of said court, at office in the city of Memphis, this
410 29th day of March, A. D. 1881, and of the Independence of
the United States the 105th year.

[SEAL.] BELL W. ETHERIDGE, *Clerk*,
W. B. WEISIGER, *D. C.*

The Western Union Telegraph Company.

This company transmits and delivers messages only on conditions limiting its liability, which have been assented to by the sender of the following message.

Errors can be guarded against only by repeating a message back to the sending station for comparison, and the company will not hold itself liable for errors or delays in transmission or delivery of unrepeated messages.

This message is an unrepeated message, and is delivered by request of the sender, under the conditions named above.

NORVIN GREEN, *President*.

A. R. BREWER, *Sec'y*, 134 *A*.

411 Dated Memphis 12, 1881.
Received at 4.12; 6.42. P.

To E. K. Sibley:

To-morrow is the last day of the fifteen allowed by Judge Hammond in the notification. Please instruct your people in accordance with the original injunction of Baxter, that there may be no confusion.

H. C. FISHER.

33 D. H. 82.

Read the notice at the top.

412 *Affidavit of E. J. Butler.*

E. J. Butler, of lawful age, being duly sworn, on his oath says: I reside at Little Rock, Arkansas; I am agent there of the express department of the Memphis and Little Rock Railroad and of the St. Louis, Iron Mountain and Southern Railway. The business of the express departments of both those companies in the city of Little Rock is done by me, and at my office, and is so done for the purpose of economy, each company paying its proportionate share of the expense; the business, however, of the companies is separate and distinct, and is so kept. Before entering the service of the St. Louis, Iron Mountain and Southern Railway Co. and the Memphis and Little Rock Railroad Co., I was for several years the agent
413 of the Southern Express Co., at Little Rock, and familiar with their tariff of rates. The paper exhibited with the answer to the supplemental petition, which purports to be a statement showing the rates charged by the Southern Express Co. before the defendant began business and those charged afterwards, was made by myself, is correct. And further deponent saith not.

E. J. BUTLER.

Subscribed and sworn to before me, a duly commissioned notary public in and for the city of St. Louis, in the State of Missouri, this 6th day of June, A. D. 1881.

[SEAL.] JAMES HOLLAND,
Notary Public, City of St. Louis.

414 *Affidavit of A. S. Wallace.*

I, A. S. Wallace, do solemnly swear: That I have been in the employ of the Memphis & Little Rock Railroad Co., as organized, in the capacity of its express messenger, for the past eleven months; that as such *that as such* messenger I have rode in the same express car with Mr. C. W. Beales, messenger for the Southern Express Co.; that on the 4th, 6th, & 8th days of March, 1881, I saw said C. W. Beales, messenger for the Southern Express Co., open and distribute from sacks of packed parcels, and from messenger's safe, both freight and money packages, at different and several points along the line of said Memphis & Little Rock R. R.

Furthermore, that on the 10th day of March, 1881, the
415 said C. W. Beales, messenger for the Southern Express Co., did proceed to open a sack of packed parcels for the purpose of

distributing therefrom, and only desisted from so doing after being informed by me that I could not allow him to so open and distribute such packages; that so doing was in violation of the superintendents of the two companies.

Furthermore, that said C. W. Beales, messenger for the Southern Express Co., did continue to open and distribute packages from messenger's safes daily from the 3rd day of March, 1881, until the 18th day of April, 1881.

A. S. WALLACE.

Subscribed and sworn to before me, this 3rd day June, 1881.
[SEAL] J. G. BOTSFORD,
Notary Public, Pulaski Co., Ark's.

416 *Affidavit of S. H. Koon.*

S. H. Koon, of lawful age, being duly sworn, on his oath says: I am at present messenger for the Memphis & Little Rock Railroad Express department. I have been there since March 24th, 1881. Previous to March 24th I was transfer clerk at Little Rock for the Iron Mountain Railway Company and Memphis & Little Rock Railroad Company. While in these capacities I noticed the operation of the Southern Express Company as to its freight, and found a considerable number of discrepancies as to the weight of their freight reported and its real weight. I call attention to particular items
that now occur to me and of which I have made memoranda.
417 February 22d, 1881, money safe, reported weight 108 pounds,
actual weight 117 pounds; March 5th, 1881, reported weight 10 pounds, actual weight 33 pounds; March 9th, 1881, reported weight 3 pounds, actual weight 5 pounds; March 8th, 1881, reported weight 42 pounds, actual weight 46 pounds; March 10th, 1881, reported weight 34 pounds, actual weight 45 pounds; March 5th, 1881, not reported, weight 16 pounds; March 9th, 1881, money safe not reported, weight 90 pounds; March 11th not reported, weight 36 pounds; same day not reported, weight 26 pounds; March 14th, 1881, money safe not reported, weight 118 pounds; March 15th, 1881, not reported, weight 4 pounds; March 15th, 1881, not reported, weight 7 pounds; March 15th, 1881, not reported, weight 65 pounds; March 16th, 1881, not reported, weight 6 pounds; March 17th, 1881,
not reported, weight 25 pounds; March 17th, 1881, not re-
418 ported, weight 25 pounds; March 24th, 1881, not reported,
weight 18 pounds; March 24th, 1881, not reported, weight 18 pounds; March 24th, 1881, not reported, weight 2 pounds; March 18th, 1881, not reported, weight 20 pounds; March 20th, 1881, not reported, weight 9 pounds; March 20th, 1881, not reported, weight 105 pounds; March 21st, 1881, money safe reported, weight 76 pounds, actual weight 86 pounds; March 22d, 1881, not reported, weight 65 pounds; March 23rd, 1881, not reported, weight 110 pounds; March 18th, 1881, not reported, weight 130 pounds. On March 23rd, 1881, they presented two packages, which they said were of no weight, and that they would pass without any weight,

but upon weighing them I found that they weighed, one 40 pounds and the other 5 pounds. On March 23d, 1881, they reported 419 four sacks containing boxes of silver as weighing 508 pounds. I weighed them and found that they weighed 590 pounds. These omissions are almost of daily occurrence. On May 2d, 1881, they reported their money box as weighing 11 pounds, and I found, by actual weight, that it weighed 21 pounds. Between the time of the agreement between Mr. Aikin and Mr. Fisher, heretofore spoken of by other witnesses, and the time when the three and six rates were re-established by the last order, I saw them opening their safe and distributing from it between the points of destination. I have also seen them open packed parcels on the train at different times between the dates above alluded to.

And further deponent saith not.

S. H. KOON.

420 Subscribed and sworn to before me, a duly commissioned notary public, in and for the city of St. Louis, in the State of Missouri, this 6th day of June, A. D. 1881.

[SEAL.] JAMES HOLLAND,
Notary Public, City of St Louis.

421 *Depositions.*

In the Circuit Court of the United States, Eastern District of Missouri.

THE SOUTHERN EXPRESS COMPANY
vs.
THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY.
} No. 1667.

Testimony of witnesses on behalf of the complainant taken before L. L. Walbridge, special examiner, in the above-entitled cause, at the law office of Glover & Shepley, in the city of St. Louis, beginning the 27th day of December, 1880.

Thomas Allen of lawful age, being produced, sworn, and examined on the part of the plaintiff, testified as follows:

Direct examination by Mr. Glover:

Q. 1. Mr. Allen, what relation have you sustained to the St. Louis, Iron Mountain and Southern Railway Company?

A. Relation of president thereof.

Q. 2. How many years? A. Ever since its existence.

Q. 3. Have you been a large stockholder? A. I have been.

Q. 4. You are still president of the said railroad. A. I am.

Q. 5. Of course you were president upon the 11th of May, 1880? A. Yes, sir.

Plaintiff's counsel shows the witness what purports to be a letter, in the words and figures following:

"St. Louis, *May* 11, 1880.

Dear Sir: In reply to your letter of the 7th, I have to say that under the contract we have made it will be impracticable to

422 have the Southern Express Company continue to do business on our line as an express company in our passenger trains, after the 26th inst. You will therefore please arrange your affairs so that the new company may take up the business without interruption from and after that date, when our contract with the Southern Express Company will have terminated.

Very respectfully, yours,

THOMAS ALLEN,
Pres't St. L. —.

Addressed to M. J. O'Brien, Esq., Gen. Sup't S. Express Co."

Plaintiff's counsel hands the letter just read to the witness, and asks him to examine it and say if he wrote it.

A. Yes, sir.

Q. 6. What did you do with it, Mr. Allen, I mean with reference to mailing and sending it; there is the envelope?

A. I think I sent it the usual way through the mail, I don't remember.

Plaintiff's counsel calls the witness' attention to the envelope accompanying the said original letter, post marked St. Louis, May 11, 2 P. M., Mo., addressed M. J. O'Brien, Esq., Gen Sup't So. Exp. Co., Memphis, Tenn., and asks the witness in whose handwriting the address just read is?

A. It is in my handwriting.

Plaintiff's counsel delivers the letter and envelope aforesaid to the examiner, and asks him to attach it to the examination of the witness.

Paper marked Exhibit A.

Counsel for the defendant objects because it is not pertinent to any issue in the case, and it is irrelevant.

Q. 7. Mr. Allen, what is the meaning of the words in the letter, to wit, "under the contract we have made"?

A. It referred to a contract made and entered into with the company about to be organized, I think, called the Mississippi Valley Express Company.

Q. 8. Was that contract in writing? A. Yes, sir.

Q. 9. Did you sign it? A. I don't remember whether I did or not, sir, it was an inchoate, unfinished, attempted organization of a new express company.

Q. 10. But that is a different thing; what I am asking you about is—

A. I was going to say that I presume I signed the paper, but I do not remember whether I did or not.

423 Q. 11. I am asking you about a contract made.

A. That is the contract I refer to——

Q. 12. You do not understand; I am asking you about a contract which you stated in that letter was made by the St. Louis, Iron Mountain & Southern Railway Company; you are answering about the articles of organization of the Mississippi Valley Express Company; they are different things. Now, was the contract which the railway company made with the Mississippi Valley Express Company, or with certain persons intending to be organized as the Mississippi Valley Express Company, signed by you?

A. I don't remember there was any independent contract, outside of the articles of association, executed in writing; if there was I don't remember it.

Q. 13. I see you don't understand; the articles of association are not a contract with the St. Louis, Iron Mountain & Southern Railroad Company—articles of association——

A. You are trying to separate the two things in my mind?

Q. 14. Yes, I don't ask anything about those articles; the articles of association constitute only an agreement to create a corporation, but a contract of the Iron Mountain Railroad is a different thing. Now I wish to know whether you ever signed a contract for the St. Louis, Iron Mountain & Southern Railway Company with the Mississippi Valley Express Company, or with any persons intending to organize a corporation?

A. I do not remember whether the contract in writing was entered into between the Iron Mountain Railway and the contemplated Mississippi Valley Express Company, but I think there was a contract written out and probably agreed to between the parties, between the members, the old members of that association, and the Iron Mountain Railway, but whether the contract was signed by those parties I do not remember, Mr. Glover.

Q. 15. Well, then, Mr. Allen, did you mean to say that when you used this language, to wit, "I have to say that under the contract we have made it will be impracticable to have the Southern Express Company continue to do business on our line as an express company in our passenger trains after the 26th inst." Do I understand you to say now that there was no contract made?

424 A. I don't say that; I say I do not remember whether I signed the contract in writing or not, or whether it was a verbal contract based upon writing which was not signed; I don't remember which it was, but it was an understanding or an agreement between those parties, made to form a company upon certain terms, specified either in writing or from memorandum, which amounted to an agreement.

Q. 16. The agreement was completed with those persons?

A. I think so, yes; I am only hesitating about whether it was signed.

Q. 17. Whether you signed those papers? A. Yes, sir.

Q. 18. Did you see those papers; did you see an instrument or instruments of writing containing the contract; was it submitted to you, and did you read it?

A. I think there was a form of a contract, in which the rates of transportation of this express company contemplated were stated and then accepted by me, and if it was not signed and executed it was ready to be signed; it was virtually agreed to.

Q. 19. It was valid contract, whether in writing or not?

A. I suppose it was; at all events I acted on it.

Q. 20. Do you recollect if those papers were so drawn as to call for your signature as president of the St. Louis, Iron Mountain & Southern Railway Company; for instance, did it begin this way: "This contract made and entered into between the St. Louis, Iron Mountain & Southern Railway Company by Thomas Allen, president, and the Mississippi Valley Express Company by Thomas Thoroughman, president," say, or anybody else; was it in that form?

A. I am trying to recall the fact; some paper or memorandum of some kind was drawn up; the particular form of it I do not now recall, but I have no such paper in my possession.

Q. 21. Sir? A. I have no such paper in my possession.

Q. 22. Was it drawn in such a form as to require a signature, if you have signed at all, is the question.

A. I do not remember whether it did or not, but I can say, generally, that these sort of contracts require the signature of the president, and are usually signed by the president of both parties.

Q. 23. Was this paper signed by anybody else?

425 A. I don't remember whether it was or not.

Q. 24. You don't know whether it was signed by Mr. Soper?

A. I don't know whether it was signed by anybody.

Q. 25. Can you state whether it was signed by any one on behalf of either of the contracting parties?

A. No, sir; I don't remember whether it was signed by anybody on either side.

Q. 26. Who were the parties to that contract?

Objected to, as immaterial.

A. The contract, if made at all, was with the company called the Mississippi Valley Express Company.

Q. 27. Who were the parties to the contract on the side of the Mississippi Valley Express Company?

A. I don't remember who they were.

Q. 28. You don't remember any of them? A. I can remember some of them.

Q. 29. Give us some of them? A. Mr. Kerens was one.

Q. 30. His first name? A. R. C. Kerens.

Q. 31. What part did he fill in the contract; did he purport to be an officer of the Mississippi Valley Express Company, or did he sign it as an individual owning stock in that company, or how was it?

Objected to as incompetent and immaterial.

A. You are asking whether I was a stockholder; that is what you want to get at, I suppose?

Q. 32. No; I mean whose names were mentioned in that paper, as or for the other contracting party than the St. Louis, Iron Mountain & Southern Railway Company?

A. You are talking about the contract; I understand now.

Q. 33. Who constituted the other side?

A. You see there were two corporations making this contract, one the Iron Mountain & Southern Railway, and the other the Mississippi Valley Express Company, and, of course, no names appeared on either side, except the president of the two companies.

Q. 34. I wish to know who was the president of the Mississippi Valley Express Company?

A. I suppose that Mr. Kerens was, but I don't remember.

Q. 35. Did he sign that paper? A. I don't remember whether he did or not; I just told you I did not remember whether any names were signed to it by either party; I have had so many papers that I have forgotten. 426

Q. 36. At what time was it that this contract which was made and written or unwritten—at what time was it made?

A. I don't remember what time; sometime——

Q. 37. Sometime this year? A. Sometime probably in the month preceding the date of that letter——

Q. 38. That is in May? A. May 11th.

Q. 39. May 11th? A. Yes; say either about that time or in the month preceding; the precise date I don't remember; I do not attach as much importance to it as some parties did.

Q. 40. Well, it is not necessary to discuss that at all; we are not discussing the case?

A. That is the reason I give, that I do not remember it; when a man thinks a thing important and charges his memory with it, then he can remember it, but it requires attention to remember things.

Q. 41. You deemed it important at that time because in that contract which you aver you had made you purposed to put the Southern Express Company off the railroad, so it is not a trifling matter, but it is a serious matter; now, will you tell me in whose handwriting the papers were?

A. I cannot do it, sir; I do not know.

Q. 42. Was A. W. Soper interested in the Mississippi Valley Company?

Objected to, as immaterial and incompetent.

A. I can't remember whether he was or not.

Q. 43. Was W. R. Allen interested in it?

Objected to, same as before.

A. I don't remember whether he was or not.

Q. 44. You think Mr. Kerens was? A. I think Mr. Kerens was.

Q. 45. How was he interested?

Objected to, as immaterial and incompetent.

A. I think he took some stock in it.

Q. 46. This Mississippi Valley Express Company was a stock company, if I understand you? A. It was proposed to be as I understand it; it never did exist.

Q. 47. It existed hypothetically; enough to make a contract; so you must allow me to talk about it before you say it either
427 existed or not, still there was something done on the idea that it existed; suppose it did exist; what had Mr. Kerens to do with it in the extent of stock, if you can tell; you say you think he was a stockholder and president?

A. I do not remember; I never saw the paper but once as I remember it, and I did not charge my mind with the names upon it, but I think Mr. Kerens was president or to be president of the company and a stockholder in it. I may be mistaken about that.

Q. 48. Do I understand you to say that you, as president of the St. Louis, Iron Mountain & Southern Railway Company, made a contract with the express company for the transporting of their express matter over the road, and that you do not know any person except Mr. Kerens who had an interest in it?

A. I did not say any such thing; you did not ask me any such question.

Q. 49. Mr. Allen, I do not want to annoy you; you seem to be impatient; I don't want to annoy you; I asked you if Mr. William R. Allen was, and you said you did not know, and Mr. Soper, and you said you did not know; I asked if anybody else, and you said you did not know, that Mr. Kerens, perhaps, was; now I infer from that you do not know who was interested; is that so?

A. No.

Q. 50. It is not so; then who was?

A. You want to know who was interested?

Q. 51. Yes, in this Mississippi Valley Express Company.

A. Why didn't you say so at first?

Q. 52. I asked you.

A. You asked me if Mr. Soper was interested, and I said I didn't know.

Q. 53. Well, isn't he somebody?

Objected to.

A. Some people think he doesn't amount to much.

Q. 54. Were those papers submitted to you, the provisions of which you assented to as you have stated as a contract, still in existence? A. I do not know.

Q. 55. Where did you last see those papers?
A. In my office.
428 Q. 56. In whose possession? A. I don't remember who took them out of my office.

Q. 57. Who brought them to you and delivered them to you?

A. I don't remember that, but my impression is Mr. Kerens did—Mr. Kerens—Mr. W. R. Allen.

WITNESS: It is my impression Mr. Kerens brought them, but there might have been several come together.

Q. 58. Who were interested in the Mississippi Valley Express

Company, what persons? A. Mr. Kerens, as I understand it, was interested or to be interested; Mr. Marquand, of New York; Mr. Elkins, I think; Mr. W. R. Allen, and myself; probably some others whose name I cannot recall; I think there were several others, some names I think I haven't seen; I haven't seen a list of the names of all parties.

Q. 59. Now I will ask you if it was or not to be a stock company?
A. It was, as I understood it.

Q. 60. Sir? A. It was, as I understood it.

Q. 61. I think you told me you did not remember in whose handwriting the papers were? A. I don't remember.

Q. 62. Have you got a copy of that paper? A. I have not.

Q. 63. Do you know any one who has a copy? A. I do not.

Q. 64. Can you give me the contents substantially of those papers?
A. No, sir.

Q. 65. Can you give me any of the contents?
A. What papers?

Q. 66. Those papers to which you assented; the contract between the parties, and which you do not remember whether they were signed? A. You mean the contract or organization——

Q. 67. I am not asking about the organization at all, I will come to that; I am talking about the contract.
A. I don't remember the details of it.

Q. 68. Do you recollect the time it was to run? A. No, sir.

Q. 69. Do you remember what the compensation was to be worth for the transporting of express matter by this Mississippi Valley Express Company?

A. No, sir; I don't remember only this, that it was larger than the Southern Express Company had been paying; that is about all I do remember about it. 429

Q. 70. Was the contract to which you have just referred exclusive in the interest of the Mississippi Valley Express Company?

Objected to, as incompetent and immaterial.

A. I don't remember whether it was or not.

Q. 71. What interest had Mr. Marquand and Mr. Allen?
A. I don't remember.

Q. 72. Do you remember what was the interest of the other interested parties? A. I don't remember a solitary one, not even my own.

Objected to, as immaterial and incompetent. You cannot prove it in that way.

Q. 73. Do you know how Mr. Elkins happened to be interested?

Objected to, as immaterial. A. I do not.

Q. 74. Do you know any one, Mr. Allen, that has a copy of that contract?
A. I do not.

Q. 75. Did you ever see a copy of it; I distinguish now from the original, it is very frequently the case an original contracts has two or three copies delivered to interested parties; I wish to know whether there was ever a copy of that thing?

A. I have no recollection of ever having seen a copy.

Q. 76. When you used in the letter referred to the words "New Company," did you allude to the Mississippi Valley Express Company?

A. I suppose I did.

Q. 77. Now, there was, if I understand you, if I do not, you will say so, written articles of association drawn up in respect to that company, the Mississippi Valley Express Company, to be filed to create a corporation; am I right? A. Yes, sir.

Q. 78. Who signed it; did you sign it for one?

A. Well, I declare, I cannot tell you whether I did or not.

Q. 79. Did Mr. Marquand? A. That I cannot tell you, I don't know I as should be able to tell you a solitary person who signed it.

Q. 80. You don't recollect a person who signed it?

430 A. No, sir: it may be I signed it; it may be that Mr. Marquand signed it; it may be Mr. Kerens signed it; whether they did or not, I do not remember.

Q. 81. How much was Mr. Marquand's stock?

A. I don't know.

Q. 82. How much was yours?

Objected to, as incompetent and immaterial.

A. I don't know, I never paid anything towards it.

Q. 83. Because you did not carry it out?

A. No; I did not carry it out.

Q. 84. What was done, Mr. Allen, as far as you know, with those articles of association of the Mississippi Valley Express Company, what became of the paper? A. I don't know.

Q. 85. Who brought it to you?

A. I have stated while ago.

Q. 86. No; the other paper; this is different, who placed it in your hands?

A. I think Mr. Kerens did, I am not positive.

Q. 87. Whose handwriting was it in? A. I don't remember, I don't know that I ever knew in whose handwriting it was.

Q. 88. Has the contract with the Mississippi Valley Express Company been abandoned? A. I think it has.

Q. 89. What time was it abandoned?

A. I cannot recall the date of it.

Q. 90. Why was it abandoned?

Objected to, as immaterial and irrelevant.

A. I think it was because of the noise and confusion raised by the attorneys of the Southern Express Company.

Q. 91. Out of deference to them? A. Out of deference to the probable results.

Q. 92. Was it abandoned before or after the commencement of this suit?

Objected to, as immaterial and incompetent to prove any fact in issue in this case and tending to prove it; it is averred in the bill that it was abandoned and admitted in the answer.

A. I don't remember when it was abandoned, whether it was before or after the suit.

Q. 93. Did the Mississippi Valley Express Company ever do any business? A. I think not as a corporation.

Objected to, same as before.

431 Cross-examination by Col. THOROUGHMAN:

Cr.-Q. 1. In the letter referred to by Mr. Glover and handed to the notary, you speak of a contract having been made by the railway company and the express company, I believe you have stated it, but I wish it again in different language. I will ask you whether anything was ever done in pursuance of that contract, whether there was any part of it ever executed at all, as far as taking charge of the express business on the Iron Mountain railway under the name of the Mississippi Valley Transportation Company or express company.

Objected to, as leading.

A. As far as taking any business on the road, it was not done; what they might have done, I don't know, I only speak of what was done on the road, on our road.

Cr.-Q. 2. You use this language in your letter to which I wish to call your attention, and then ask you to explain it in respect to your letter: "I have to say, under the contract we have made, it will be impracticable to have the Southern Express Company continue to do business, &c.;" now the contract you speak of there, if I understand you, was the one that has been referred to as having been made Mr. Kerens and yourself, and under which there was nothing ever done?

A. Yes, sir.

Objected to, as leading.

Cr.-Q. 3. I understand you to state in your examination-in-chief that the company that was proposed to be organized was never organized?

Objected to. A. That is my understanding.

Cr.-Q. 4. That it was abandoned, and hence I say most all of its features and provisions have vanished from your recollection?

Objected to. A. Yes, sir.

Cr.-Q. 5. I will get you to state, if you can, how long after the 11th of May it was until this contemplated company was abandoned; your letter seems to be dated on the 11th of May; I presume that is the true date, 1880; how long after that was it till all idea was given up of forming an express company?

Objected to, as leading.

A. I stated something in answer to Mr. Glover, that I did no remember when it was abandoned.

432 Cr.-Q. 6. Well, now Mr. Allen, just tell us what steps were taken towards the formation of a company; was there anything done other than that, that you have named?

Objected to, as leading.

Cr.-Q. 7. Just tell us now what steps were taken to form this company, that has been spoken of by Mr. Glover?

A. I think I have answered Mr. Glover a similar question, that I did not know. I had nothing to do with it, except to sign my name to a paper or two.

Cr.-Q. 8. Was there any money ever paid that you know of by you?

A. Not that I know of; none by me certainly, and I have received none.

Cr.-Q. 9. You have received none for its earnings?

A. No; nor paid none.

Cr.-Q. 10. Now, isn't this the sum total of what was done?

Plaintiff's counsel objected to the form of the question.

Cr.-Q. 11. Have you stated all that took place in reference to the formation of this company, that you now remember?

A. About the only thing that I can remember as to that, there were some articles of association presented to me, which, I think, I must have read and signed, and the paper was taken away and I have never seen it since; that is all I can say about that; what was done with it, or what progress was made in the organization, I really don't know.

Cr.-Q. 12. Except that you know that you did not pay any money for any stock in it?

A. I paid no money.

Cr.-Q. 13. And the contract, if I understand you, that you have stated to Mr. Glover, was never entered into in carrying express matter on the Iron Mountain Railway Company?

Objected to, as leading.

A. No, sir.

Cr.-Q. 14. Now, I don't think you stated what seems to be in the question of Mr. Glover, that there were two papers; did you mean to state there were two papers of organization presented to you or one?

A. I don't remember those two papers that you speak about; I can only remember that there were articles of association, and
433 I think the substance of a contract or agreement or a proposed agreement in which the rates were stated, which this company would pay the Iron Mountain & Southern Railway Company for transportation of express matter, which I accepted and agreed to; that is the kind of contract I speak of, whether signed by anybody or not, and I said so before; perhaps you can prove that by other people; I do not remember.

Cr.-Q. 15. You say the terms were more favorable to the railway company? A. The terms were more favorable than they had been receiving.

Cr.-Q. 16. From the other express company?

A. Yes, very largely so.

Cr.-Q. 17. If I get your recollection about the subject of the formation of this company it was only shortly before you must have written this letter that it was contemplated?

A. Yes, only shortly before.

Cr.-Q. 18. Shortly after that it was all abandoned?

A. Yes, sir.

Cr.-Q. 19. Was it to be a corporation under the laws of Missouri or have you a recollection on that subject, or was it in Arkansas?

A. I think it was under the laws of Arkansas.

Cr.-Q. 20. No steps to your knowledge were ever taken to perfect the corporation under the laws of Arkansas.

A. I don't know whether the articles were filed; I never saw the paper after it was laid before me, and I don't know whether anything was done with it or not.

Signature waived.

R. C. Kerens of lawful age being produced, sworn, and examined as a witness on the part of the plaintiff, testified as follows:

Direct examination by Mr. GLOVER:

Q. 1. What is your business, and what has been your occupation?

A. I have been running a stage line, running the Southern Overland Stage Company; general superintendent of that to California, and have owned the western end of it, lately covered by railroads used to run to San Diego.

Q. 2. You came to St. Louis to go into business when?

A. About four years ago, located here.

434 Q. 3. What business are you in at this time?

A. Well, I own an interest in what is left of the stage line now and I am in the coal business.

Q. 4. Have you any connection with the St. Louis, Iron Mountain & Southern Railway Company?

A. Yes, sir; I have been attending to the express business.

Q. 5. What is your official position in it?

A. Manager of the express department of that road.

Q. 6. When were you introduced into that express business?

A. As a manager?

Q. 7. As connected with it in any way? A. I was appointed manager of it when the decision was reached to organize a railroad express; I think that was in May.

Q. 8. Before that time Mr. Kerens?

A. Before that time I was just simply acting in my own behalf, or aiding in the organization of a new company.

Q. 9. What new company? A. A new express company.

Q. 10. Give the name? A. Well, it was finally decided to call it the Mississippi Valley Express Company.

Q. 11. Now, what time did you begin to interest yourself in the Mississippi Valley Express Company?

A. I don't know exactly; it was some months before this time in which I was appointed manager of the railroad express.

Q. 12. Some months before you went into the express department?

A. Yes; along in the winter sometime.

Q. 13. In what way did you become interested in the Mississippi Valley Express Company?

A. Well, I was going to suggest that I would tell you the whole story and then be through with it. I can tell you the whole thing. Sometime in the winter, last winter, I talked with Mr. Marquand and other gentlemen in New York about starting an express company. Mr. Marquard was favorable to it; I then——

Q. 14. Let me interrupt you ocasionally. Was he interested in the St. Louis, Iron Mountain & Southern Railway Company?

A. Yes; I spoke to him because he was a stockholder.

Q. 15. Because he is a stockholder? A. I do not know; he is supposed to be.

435 Q. 16. Go on. A. I suggested the formation of an express company and talked it up generally, and the conclusion was reached that we would organize an express.

Q. 17. For the St. Louis, Iron Mountain & Southern?

A. For the St. Louis, Iron Mountain & Southern, and also for the International & Great Northern and for the Texas Pacific. We talked with the officials of all those roads, and they agreed to the plan.

To all this defendant's counsel objects, as irrelevant and incompetent.

(Continuing.) Finally the plan of a company was projected. Mr. Allen was spoken to about it, and we talked over fully about the articles of association drawn up and signed by the gentlemen in New York. Everything went smoothly on until, as Mr. Allen suggested, the attorneys made a fuss.

Q. 18. What attorneys? A. We went there and consulted with the Louisville and Nashville people——

Q. 19. Who did? A. I sent Mr. Aikin over there, and upon a full conference of all parties interested, it was decided that the company should not be organized, and the whole project was abandoned, and upon further consultation with the attorneys, sending over to Louisville for the Louisville and Nashville attorney——

Q. 20. You mean the attorneys of the Iron Mountain & Southern Railway Company? A. Yes, the attorneys of the Iron Mountain & Southern railway and the Louisville and Nashville attorney was over here; it was decided to organize a railroad express, and I hated to see that done, because I was in hopes this other corporation would go on; but Mr. Allen himself decided that he would organize a railroad express.

Q. 21. Why?

Objected to, as immaterial.

A. And the whole subject was abandoned. Those articles were never filed, and there has not been anything of it since at all, so I suppose that all parties, at least I did, considered that was the end of the Mississippi Valley Express Company scheme; the end of it. The proposition was to organize it under the laws of Arkansas, but we never got so far as to file the articles at all; the whole subject was abandoned and broken up, and it has just been see-saw ever since in that way.

436 Q. 22. Now, are you through? A. That is the history of the thing.

Q. 23. That is all you want to say without interruption?

A. Well, I wanted to get at it as near as I could.

Q. 24. Yes, sir; well, that is right; but the articles were drawn for the formation of the Mississippi Valley Express Co.?

A. Yes, sir.

Q. 25. And signed? A. Yes, sir.

Q. 26. Who were the parties to that organization?

Objected to, as irrelevant.

Q. 27. Who signed the articles?

A. Well, I signed them for one, and Mr. Marquand's son signed them.

Q. 28. You mean Henry G. Marquand? A. I mean Henry G. Marquand's son signed them.

Q. 29. His name? A. Frederick A. Marquand.

Q. 30. He signed for his father or for himself? A. No; for himself, and Mr. Allen's son signed them.

Q. 31. Which son? A. Mr. George Allen.

Q. 32. Did he sign for himself or for his father?

A. For himself.

Q. 33. Who else? A. Mr. W. R. Allen.

Q. 34. You mean for himself? A. O, certainly for himself.

Q. 35. Did Mr. Thomas Allen sign it?

A. I am not sure about that; my impression is that he did.

Q. 36. Who else, Mr. Kerens? A. That is all; I signed for Mr. Elkins and myself.

Q. 37. You having his authority? A. Having his authority; yes.

Q. 38. Did Mr. Soper sign it? A. I don't think Mr. Soper signed it.

Q. 39. He had no interest in it?

A. Yes, he was to have a little small interest in it, a very small one; and Mr. Paramore signed it.

Q. 40. Paramore, the merchant? A. Paramore, the cotton man here.

Q. 41. You say Soper; how was his interest.

A. I think that George Allen was to give Mr. Soper some of his interest.

437 Q. 42. Then, he was interested in Mr. George's share?

A. I think he was to have, as I understood it, some little interest with George Allen; but I don't think it was on the face of the paper he signed.

Q. 43. Was anybody else interested? A. None that I know of.

Q. 44. Than you have named? A. No, sir.

Q. 45. How much was the capital? A. I declare, I have pretty near forgotten about that; somewhere in the neighborhood of a half million, I think.

Q. 46. $500,000? A. Somewhere that way; then, there was Mr. Dodd.

Q. You mean Sam Dodd?

A. Sam Dodd; yes; he was a party.

Q. 47. Who else? A. That is all; I think.

Q. 48. How much interest had you, Mr. Kerens? A. I had about a twelfth, I think, as I remember now.

Q. 49. Of the $500,000? A. Yes; about a twelfth.

Q. 50. What did Mr. George Allen have? A. He did not have quite that much.

Q. 51. What did William R. have?

A. I think he must have had a 15th or a 16th; somewhere along there; less than mine, I know.

Q. 52. Now the young man, Mr. Marquand? A. Mr. Marquand; I think he and his brother had about as much as I had, or probably more; seems to me he had about twice as much as I had.

Q. 53. Now Samuel Dodd? A. Samuel Dodd had the same amount as I had; just the same exactly.

Q. 54. What did Mr. Thomas Allen's amount to? A. I think he had less; I forget about that now; it was Mr. Allen's other son.

Q. 55. William? A. No; Bradford; he was interested—to have an interest; whatever interest Mr. Allen had, was that.

Objected to, as incompetent.

Q. 56. Did you sign that as president? A. No, sir.

Q. 57. Had you just a hypothetical board; did you agree on a board? A. No; we did not agree on a board.

Q. 58. Didn't you agree on your directors; you had to, under the law?

438 A. We went as far as we could; I think we would have had to have gone to Arkansas to organize.

Q. 59. You organized under the statute, and if that required you to name directors, you did so?

A. I don't think the statute requires that; I think everything was to be done in Arkansas at the first meeting, which we never had.

Q. 60. It was under the Arkansas law? A. It was proposed to be under the Arkansas law.

Q. 61. I mean, intended to be; that is, the understanding; but it did not take effect.

A. We never carried it out.

Q. 62. Now, Mr. Kerens, we have the hypothetical corporation that was to be; now, you had a hypothetical contract that was to be?

A. Yes; we talked that all over.

Q. 63. With this intended corporation? A. All proposed——

Q. 64. Who signed that on the part of the Mississippi Valley Express Company? A. I did.

Q. 65. By what title? A. Well, as president.

Q. 66. To be? A. To be; yes; it was all in contemplation.

Q. 67. I understand; you signed your name, Mr. Kerens, as president of the Mississippi Valley Express Company?

A. Yes, sir.

Objected to.

Q. 68. To be formed, or did you sign it?

A. Well, I signed it, of course, as president; everything was in contemplation.

Q. 69. Now, who signed it for the railroad?

A. Mr. Thomas Allen.

Q. 70. Did you ever see his signature to it? A. I think I did at the time.

Q. 71. Have you any doubt about it? A. No, sir.

Q. 72. Where is that contract? A. Mr. George Allen has all the papers.

Q. 73. Sir? A. All the papers were put into Mr. George Allen's hands.

Q. 74. You mean George or William R.? A. In George's.

439 Q. 75. In whose handwriting was that contract? I mean the contract between the Mississippi Valley Express Company that was to be and the St. Louis, Iron Mountain and Southern Railway Company? A. I think it was written up by a short-hand man over there at the Iron Mountain Railway office.

Q. 76. What was his name? A. I don't know what his name is. I don't think he is there. I think W. R. Allen sent out and had him brought in, and he dictated to him.

Q. 77. Has he left the city? A. No, I guess not. I guess he belongs to some of the lawyers.

Q. 78. Does he live here? A. I guess so.

Q. 79. Where is he?

A. I don't know the young man. He was brought in there. W. R. Allen will undoubtedly know him. He is from some lawyer's office; he took the notes.

Q. 80. He was not in Mr. Donaldson's office, was he?

A. No, I think not. I do not think he is in the Iron Mountain, though.

Q. 81. Then he is not in the office of Thoroughman & Pike?

A. No, sir.

Q. 82. Do you see him about the city now?

A. I haven't seen him, but it seems to me he was a young man they had sent for occasionally when they had anything of the kind to do.

Q. 83. He made a copy of the papers to be signed, did he?

A. Yes, sir. Q. Drew it up? A. Yes, sir.

Q. 84. This contract was in the writing of this young man?

A. Well, it was given to him.

Q. 85. To put into fair writing? A. Yes, sir.

Q. 86. And afterwards signed by you and Mr. Allen?

A. Yes, sir.

Q. 87. Have you got a copy of that?

A. I probably have, somewhere among my papers. If not, George Allen has got it, probably.

Q. 88. Will you look for it and give it to us?

A. I can, yes, if it is any accommodation to you.

Q. 89. Yes; it will be a very great accommodation. Do you know of any one else who had a copy of it?

A. No; I do not, sir.

Q. 90. Did it have the seal of the Iron Mountain Railroad to it?

440 A. No, sir; I think not.
Q. 91. Sure about that? A. Yes, I am sure about that.

Q. 92. That it did not have the seal, or that it had?

A. I think not; I do not think it had.

Q. 93. You issued no stock?

A. No; we collapsed.

Q. 94. You "blowed" out? A. We just quit, you know; the whole thing went to smash.

Q. 95. Owing to the noise and confusion which prevailed?

A. Yes; we just quit, you know.

Q. 96. You quit after you visited over to Louisville?

A. Yes, sir.

Q. 97. You heard what the judges had done there?

A. No. We consulted with the lawyers here, and saw we could not do it, you know. That is all about it. We quit, and that is the end of it. It is gone, a thing of the past, and, as I told Fisher, of the other side, I turned him over to the tender mercies of Jay Gould.

Q. 98. Well, now, you took a good deal of interest in this?

A. I did, in starting it.

Q. While it was going to be? A. Yes; certainly.

Q. 100. And you considered it well? A. I did, and gave lots of thought to it.

Q. 101. Now, can you give us the leading features of that contract? A. I can.

Counsel objected, because the witness says he is going to furnish it.

Q. 102. Now, how long was that contract to run? A. It was to run ten years or twenty-five years.

Q. 103. And provided the terms upon which the Mississippi Valley Express Company would operate upon the St. Louis, Iron Mountain and Southern Railway? A. Yes, sir.

Q. 104. And the conditions? A. Yes, sir.

Q. 105. Was it exclusive, or was it giving a general right to your company to run upon the road with others, or was it an exclusive right in your company?

Objected to, as immaterial.

A. I think it was copied after the Southern Express Company's contract in pretty much all its main features, except the bargain, you know—except the compensation.

441 Q. 106. Except the compensation? A. Yes, sir.

Q. 107. Well, what was that? A. The compensation was to be half of the gross earnings, and then the company was to guarantee the Iron Mountain Railroad, at all hazards, a greater compensation than the Southern Express Company had ever paid them; it was copied pretty much from the other.

Q. 108. Col. Thoroughman was the other exclusive, do you mean to say?

A. I do not know that; it was copied pretty much after that; it was a fair contract, drawn up fairly for both sides.

Mr. Glover: Q. 109. Mr. Kerens, will you state whether there was any clause in the contract between the Mississippi Valley Express Company and the St. Louis, Iron Mountain & Southern Railway Company to the effect that the Mississippi Valley Express Company alone should operate on that road the express business?

Objected to, as incompetent and immaterial.

A. I think there was.

Q. 110. The Mississippi Valley Express Company agreed to give up its gross earnings to the railroad for carrying its express matter and messengers? A. Yes, sir.

Q. 111. Half its gross earnings, that is, fifty per cent?

A. Fifty per cent., yes.

Q. 112. And should guarantee the company in what?

A. In some per cent. greater than the Southern Express Company had been paying.

Q. 113. How much? A. I believe it was five per cent.; I am not entirely sure about that; five or ten per cent.; somewhere along there; that is, that the aggregate paid to the railway company should be greater.

Q. 114. Then was it just that it should be greater, or did it name a sum for which it should be greater?

A. It named half of the amount, and that that half should be so much.

Q. 115. That that half should be in excess of what the Southern Express Company had paid.

A. Yes, sir; that is it.

Q. 116. But it did not say how much in excess?

A. Yes, it did; five per cent., I think.

Q. 117. Five to ten? A. Five per cent.; five to ten per cent.; at any rate it should not be less than that; that is the idea;
442 it should not be less, it might be as much or more, but it should be five per cent.

Q. 118. Now, what provision, if any, did it contain about the liability of the St. Louis, Iron Mountain & Southern for the safety of express matter carried on the railroad by your company, the Mississippi Valley Express Company; was there anything said about that in that contract?

A. I can't tell you; if there is such language in the old contract that you had, probably there is such a thing in this.

Q. 119. Do you understand what I mean? A. I understand you want to know whether that provided to indemnify the railroad?

Q. 120. Yes, sir.

A. I cannot tell about that; it seemed to be satisfactory at the time.

Q. 121. Suppose that contract had gone into effect, and this Mississippi Valley Express Company had shipped $1,000 worth of goods on the railroad and it had been lost, under such circumstances that the owner should have made a claim against the railroad, were you to pay that; did it say anything about that; did the Mississippi Valley Express Company assume to pay all damages the road should sustain in respect of your express matter? A. I presume it did; that is my recollection.

Q. 122. The express company assumed that responsibility?

A. Of course I should say it would.

Q. 123. But the question is whether it did?

A. Well, I can't state positively; it was an agreement in the contract that covered all those points, and whatever would seem to be right about it, it would state it.

Q. 124. That your company was to indemnify the railroad against damages on account of your express matter, is that so?

A. We were to pay the railroad this amount that I have stated, and the railroad was sure to get that, and that is all the railroad had to do with it.

Q. 125. The railroad would not have anything to pay out on account of losses in respect of express matter transported by the Mississippi Valley Express Company; is that so?

A. Well, I suppose that is so; I cannot tell exactly, you know; the whole thing was defunct, and I never thought about it.

443 Q. 126. Now, Mr. Kerens, I don't want to close your deposition now; I want you, if you please, to see if you can give me a copy of that contract? A. I think I can find that.

By consent the further taking of this deposition was adjourned until to-morrow, December 28, 1880, at 2 p. m.

St. Louis, *December* 28, 1880, 2 p. m.

Parties met pursuant to adjournment, and the examination of Mr. Kerens was resumed as follows:

Q. 127. Mr. Kerens have you got that contract? A. No, sir; I have not.

Q. 128. Have you got a copy of it? A. I haven't, with me.

Q. 129. Have you got one elsewhere?

A. I think I have got one among my papers somewhere.

Q. 130. Where are your papers among which you think it is?

A. I have got my papers up to my house in my little box.

Q. 131. Did you examine as you promised me?

A. No; I haven't had time. I have been awfully busy. I haven't had time; just got back, and have been overwhelmed with work.

Q. 132. Will you look hereafter for it? A. Yes, sir.

Q. 133. What time will you be able to report? A. I can't say exactly. I have told you the substance.

Q. 134. I know, but there are many things you are not certain about. A. Yes; but I am certain about that, I think.

Q. 135. Will you get that paper for us if you can?

A. Yes; I will look it up, I guess. I won't promise positive.

Q. 136. Will you promise to make a search for it?

A. Yes; I will look over my papers at the house to-night.

Q. 137. Well, then, will you come day after to-morrow morning? A. Yes, sir.

Q. 138. Have you any objection to making a search for that paper and producing it, if you can find it?

A. No, not from my present standpoint. I do not see any objection, though I have not given it much thought. I do not certainly consider it of any value at all. I do not consider it any secret.

Q. 139. That is the reason you ought to give it to us. Has anybody asked you that you should not give it to us?

444 A. No, sir; there is not anybody at all. I do not think anybody attaches much value to it; but in view of what is going on I would have to ask whether I shall search it up.

Q. 140. You don't want to.

A. Personally, I don't care.

Q. 141. You don't care whether you do it or not? A. I do not put it in that light. I say I don't care. I have no particular preference in the matter.

Q. 142. Do you wish to express this statement that you do not wish to look for that paper?

A. No; I haven't so expressed myself.

Q. 143. Mr. Kerens, I have a right, as I told you in the presence of the officer, to require you to make a search for that paper. A. Then I shall certainly do it.

Q. 144. And to state under oath whether you have made a faithful search? A. Yes. Q. And I shall ask you that, and if you haven't made a faithful search for that paper, why it is a matter between you and the officer. If it is of no importance to you, it is a matter of some importance to us, and we shall use the power we have to get that paper in our hands. I don't want to trouble you, of course; at the same time we insist on our rights.

A. Well, if I search for it I will tell you so, and if it is right for you to have it I shall give it to you, but I shall consult my side of the question a little. I have not yet. I have stated to you practically all that was in it.

Q. 145. What do you mean by your "side of the question;" are you a party to this suit? A. No; not at all, sir.

Q. 146. Do you think you are interested in it, Mr. Kerens?

A. Well, yes; I naturally feel a friendly interest toward the Iron Mountain Railroad.

Q. 147. That is not an interest—you have no pecuniary interest?

A. Yes; I am a stockholder in the road and am interested in its prosperity, and hold its securities, and I wish to protect it.

Q. 148. Do you think the production of a paper which you deem utterly useless will be injurious to the interests of the road? A. No; I think not. I cannot see how it will be.

Q. 149. Well, then, we will adjourn the further examination of Mr. Kerens till Thursday morning at 10 o'clock.

445 Witness is instructed that he is required by the examiner to make a faithful, diligent search for the original contract between the Mississippi Valley Express Company and St. Louis, Iron Mountain & Southern Railway Company, or a copy thereof, and to produce the same on Thursday morning at 10 o'clock, at this office, before the examiner.

Q. 150. Have you had that paper in your possession in the last hour?

A. No, sir; I have not, indeed; I do not suppose I have seen it for months.

The further examination of this witness was adjourned until 10 o'clock, Thursday morning, Dec. 30, 1880.

William R. Allen, of lawful age, being produced, sworn, and examined as a witness on the part of the plaintiff, testified as follows:

Direct examination, by Mr. GLOVER:

Q. 1. What is your business, Mr. Allen? A. I have got several kinds of business; I am second vice-president of the Iron Mountain Railway Company; I suppose that is all you want in this case.

Q. 2. How long have you been such?

A. I have been there since sometime last May, in that position.

Q. 3. Have you not been connected with the St. Louis and Iron Mountain in any other position? A. Yes, sir.

Q. 4. For instance, have you been ticket agent?

A. Yes, sir.

Q. 5. How long?

A. Well, I don't remember, six or seven years.

Q. 6. You are now the second vice-president of the Iron Mountain Railroad Company? A. Yes, sir.

Q. 7. Who was the first vice-president?

A. Mr. Marquand.

Q. 8. Your father, Thomas Allen, is president?

A. Yes, sir.

Q. 9. And has been since the existence of the road, has he? A. Yes, since 1867.

Q. 10. A. W. Soper has been general superintendent how long?

446 Well, I cannot tell you; I suppose about six years, perhaps seven.

Q. 11. What is the relation of Mr. Kerens to the St. Louis, Iron Mountain and Southern Railway Company?

A. He manages the express department.

Q. 12. How long has he been in it?

A. Sometime in June last.

Q. 13. Did you ever know, Mr. Allen, anything about a corporation that was, or was to be, formed, called the Mississippi Valley Express Company?

A. Yes, I have heard of such a company.

Q. 14. What did you know about that, Mr. Allen?

A. What did I know, or do I know?

Q. 15. Just tell us what you know about it, the general question, to enable you to tell it without stopping you.

Defendant's counsel objected, as immaterial.

A. I don't know as I know very much about it.

Q. 16. Do you know anything about it at all?

A. I knew there was such a concern contemplated at one time.

Q. 17. But you know no more than that?

A. Well, I don't know what that means; how much I know or little I know; if you will ask me what you want to about it, perhaps I can tell you better; ask me direct questions, I might be able to suit you better.

Q. 18. Do you know of any articles of association prepared by anybody to form a corporation to be called the Mississippi Valley Express Company?

A. I think there were some drawn up; yes, sir

Q. 19. You think? A. Yes, sir.

Q. 20. You don't know?

A. Well, I am pretty sure there were.

Q. 21. But don't know it, tolerably sure; you don't know whether it was so or not?

A. Well, no, I am not sure; I know there was a draft of articles of association; but whether they were ever signed by the parties who were expected to join the association or not, I don't remember.

Q. 22. How do you know there were articles of association? A. Well, I have read them, or I helped to devise them.

447 Q. 23. Did you read them? A. Yes, sir.

Q. 24. You know that positively?

A. I am very sure; yes, sir.

Q. 25. Then when you said you were not positive.

A. I did not say so.

Q. 26. Well, what did you know about it?

A. Well, I don't know what I did know.

Q. 27. Do you think any of your neighbors know what you know?

A. No, I don't believe they do.

Q. 28. Well, you read those articles of association; what did they say? A. I cannot tell you.

Objected to, as incompetent to prove it in that way.

Q. 29. When did you read those articles of association?

A. Sometime early in this year; I can't say whether in January or June; it was between January and June, very likely.

Q. 30. Of 1880? A. Yes, sir.

Q. 31. Do I understand, you do not remember anything those articles contained?

A. I know what the general idea was.

Q. 32. Well, tell us what it was.

A. But I do not know the form of the words or anything about it.

Q. 33. Well, in the meantime you do know, it appears, something; but we do not get at it; what do you know?

A. Well, the object was—I know just as much as you do; I know as much as you do about it.

Q. 34. I know nothing about it.

A. To the effect that a corporation was to do the express business, that is all.

Q. 35. Did anybody sign it? A. I don't remember whether they did or not.

Q. 36. Did you sign it? A. I cannot remember whether I did or not; I can't say; don't think I did.

Q. 37. Who was interested in it? A. In what?

Q. 38. In signing it—the articles of the association?

A. Well Mr. Kerens, George Allen, myself, Mr. Marquand——

Q. 39. In whose handwriting were the articles that you saw? A. I can't say, sir.

448 Q. 40. Who drew it up? A. That I don't know.

Q. 41. How did you see it? A. I expect Mr. Kerens showed it to me.

Q. 42. You expect? A. Well, I do, yes; I expect it, I think so, believe so.

Q. 43. You don't know whether he did or not?

A. I believe he did.

Q. 44. Sir? A. No, I don't know.

Q. 45. Mr. Kerens had it in his hands, I suppose, when he showed it to you? A. Very likely; yes.

Q. 46. Very likely? A. I suppose Mr. Kerens showed it to me; I won't be be positive whether Mr. Kerens or Mr. Allen.

Q. 47. I know you say you "suppose;" I wish to know whether you can make a stronger statement than that?

A. No, sir.

Q. 48. You say you think you saw it? A. I did see it.

Q. I thought you said you supposed you saw it?

A. 49. No, I did not.

Q. 50. Where was it when you saw it last?

A. Well, I don't know whether I ever saw it; but my imagination is I saw it in the president's office of the Iron Mountain Railroad; I believe Mr. Kerens was the possessor of the paper.

Q. 51. Do you say now you don't know that you ever saw it?

A. Well, I said awhile ago that I had seen it, and I think so still; I think I am right about it.

Q. 52. But you don't know whether it is so; didn't you tell me you read it?

A. I think I have read it, or some such paper.

Q. 53. You think? A. Yes, sir.

Q. 54. Do you mean to express that as a matter of doubt whether you did read it?

A. Well, I don't know whether I ever read the articles of association, but I think so, and feel pretty positive that I have; that is the state of my mind on the subject.

Q. 55. Do I understand you had it in your hand?

A. If I read it I had it in my hand.

Q. 56. If you read it? A. Yes, sir.

449 Q. 57. But you don't know that you saw it or whether you read it or ever had it in your hand? A. Well, I have no vivid remembrance of having read it, but I think I am pretty safe in saying I have read it, and that I have had it in my hand.

Q. 58. What did you do with it? A. I don't know, sir.

Q. 59. Did you burn it up? A. No, sir.

Q. 60. Are you positive about that?

A. Yes, I am positive about that.

Q. 61. That it left your hands without being destroyed?

A. Yes, sir.

Q. 62. Who did it go to? A. I don't know.

Q. 63. Mr. Allen, had you any interest in the Mississippi Valley Express Company? A. I had not at that time; no, sir.

Q. 64. Did you ever have?

A. I don't know that there was ever any such company.

Q. 65. Were you ever to have any interest? A. Yes, sir.

Q. 66. How much? A. That I cannot say.

Q. 67. Does anybody know what you were to have?

A. I suppose Mr. Marquand knows that; there was no positive arrangement as to it.

Q. 68. How do you account that you were to have an interest in a thing that you do not know and somebody else does?

A. I leave you to account for that; the thing was crude and never had been brought to a head, and there was not anything to it; that is the long and the short of it.

Q. 69. For that reason you don't know whether you ever saw it?

A. Well, you have gone over that once or twice or three times.

Q. 70. Well, you have gone over it once, twice, or three times; you have stated you are sure you have read it, and then you stated you did not know that you read it.

A. Well, I feel pretty sure that I have.

Q. 71. Do you know of any contract drawn up between the St. Louis, Iron Mountain & Southern Railway Company and the Mississippi Valley Express Company, which was to be organized, or with any persons representing the Mississippi Valley Express Company which was to be organized as a corporation?

450 Objected to, as incompetent and immaterial.

A. Yes, there was such a paper.

Q. 72. What do you know about that, Mr. Allen?

A. Well, what do you want to get at?

Q. 73. I wish to know what you know about it; have you any recollection about it?

A. Do you want me to recite it as near as I can remember from beginning to end?

Q. 74. I have not asked about the contents, but the existence of the paper. A. I have stated that there was a paper of that sort.

Q 75. Do you know whether it was signed? A. Yes, sir, it was signed.

Q. 76. Who by?

Objected to, same as before.

A. Signed by Thomas Allen, president of the Iron Mountain Railway Company, and, I think, by Mr. Kerens for this association.

Q. 77. Where is that paper? A. I don't know, sir.

Q. 78. Did you destroy it?

A. No, sir.

Q. 79. Did you put it away? A. No, sir.

Q. 80. How do you know it existed? A. I saw it.

Q. 81. Where did you see it? A. Well, it was on my desk at the office.

Q. 82. How long? A. Oh, off and on for perhaps two or three weeks, being altered and amended, fixed up, &c.

Q. 83. What became of it? A. I suppose the secretary of the railway company has it, but I don't know.

Q. 84. He has it. A. Very likely.

Q. 85. Who is the secretary? A. Mr. Barlow—S. D. Barlow; all such papers are put in his hands.

Q. 86. How did it leave your desk? A. I don't know; it did not walk, I guess; I very likely took it and handed it to Mr. Barlow; that is the rule.

Q. 87. Do you mean you did? A. I do not say I did.

Q. 88. I know you did not say you did, I wish to know the fact.

A. Well, I do not know the fact.

Q. 89. You considered it a matter of no importance.

A. Well, he very likely has it, whether I took it to him, handed it to him, or told him what it was and what to do with
451 it, whether he came to my office, or I handed it to him, or he took it off the desk, I do not know.

Q. 90. Were you not to have a twelfth of the capital stock?

A. I told you I did not know that there was any certain quantity that I was to have of the stock.

Q. 91. How long was that thing kept alive, till it was abandoned and given up? A. I don't know what time we commenced talking about it; I suppose two or three months; may be more.

Q. 92. Didn't you consider it a matter of great interest to you while it was going on?

A. No, sir; not very much; not a great deal.

Q. 93. Whose handwriting was the paper in that you saw?

A. It was printed.

Q. 94. What sort of print? A. This machine print, that you have over there.

Q. 95. Who did it?

A. A short-hand reporter, a stenographer.

Q. 96. His name? A. I don't know, sir.

Q. 95. You never saw him? A. I saw him, yes.

Q. 97. Where does he live?

A. I don't know who he is, what he is, or whereabouts.

Q. 99. Did he come down through the roof of the house?

A. He came there.

Q. 100. Did you tell me you did not know anything about who it was that made a copy of that paper?

A. I did; I said so.

Q. 101. How often did you ever see the man who did it?

A. I never saw him more than three times.

Q. 102. Didn't you see him at work?

A. I saw him taking the short-hand notes.

Q. 103. Did you know his name? A. No, sir.

Q. 104. Who sent for him to do this work?

A. I think I did.

Q. 105. And you don't know who you sent for?

A. I sent for a man.

Q. 106. You simply sent for a man?

A. A short-hand reporter; yes.

Q. 107. How long was he engaged with you preparing, amending, and fixing to make that contract?

452 A. Probably two or three hours altogether; not more than that.

Q. 108. You tell me you did not know who he was?

A. I don't know his name, nor where he came from or went to.

Q. 109. Have you ever seen him since?

A. No, sir; I have not, to my knowledge.

Q. 110. You don't know whose handwriting that original was in?

A. I wrote some of it myself; some of it was written by Mr. Kerens. Whether anybody else had anything to do with it—the actual writing of it—I do not remember.

Q. 111. Is there anything else that you remember about that time upon any other subject?

Objected to, as immaterial.

A. I don't know that there is.

Q. 112. Who where the stenographic reporters at and about the Iron Mountain railway office at that time; do you know the names of any of them? A. No, sir.

Q. 113. Do you know the names of any of the employees in the company—the Iron Mountain Railway Company?

A. Yes, sir.

Q. 114. Give us the names of any one.

A. Mr. Thoroughman is one.

Q. 115. Is that all you know? A. I know nearly all of them.

Q. 116. Let us have them.

A. It is a waste of breath telling you the names of the employés.

Q. 117. Sir? A. It is a waste of breath and time and thought.

Objected to, as immaterial.

A. (Continuing.) I can say, as I have before, that I don't know who this stenographic reporter was, or what his name was, where he lives, or where he can be found. I don't think it makes any difference.

Q. 118. Do you think anybody knows?

A. Yes; I can find out who he is.

Q. 119. How will you find out?

A. I can go and ask the man I sent to him.

Q. 120. Who was the man you sent to him?

A. Mr. Ruggles, general ticket agent of the Iron Mountain railroad.

453 Q. 121. Do you know whether the gentleman who helped about this was paid?

Objected to as immaterial.

A. I will have to look over the books to see, sir.

Q. 122. You told me you only had an interview, a single interview, with the stenographic reporter, of about three hours?

A. No, I did not say that; I said, altogether, about three hours he was occupied.

Q. 123. How many times did you have him?

A. I said two or three times.

Q. 124. How much, about at a time? A. Twenty to thirty minutes to an hour.

Q. 125. He worked a machine? A. No, sir.

Q. 126. Who made the copy on the machine? A. I suppose he did; he took the notes and brought a copy back.

Q. 127. Haven't you that original paper in your possession?

A. No, sir.

Q. 128. How do you know?

A. O, the original paper; I don't know whether I have or not; it may be possible among the papers in my desk.

Q. 129. When did you see it last, I mean the contract of the Mississippi Valley Express Company with the St. Louis, Iron Mountain & Southern Railway Company? A. No, sir; I haven't that.

Q. 130. Sir? A. I haven't it there at all.

Q. 131. How do you know? A. I know I have not?

Q. 132. Have you made search for it? A. No.

Q. 133. Sir? A. No, I haven't; what do I want with it?

Q. You do not want it; you mean you would not if you could, do you?

A. No, I do not; I have no object in looking for it.

Q. 134. Do you want to suppress that paper; if you had it in your possession, would you like to suppress it? A. No, sir.

Q. 135. Why do you ask me, "what would you want with it," without you mean to say you do not want to produce it if you had it?

A. I mean to say I have no object in keeping it away from you at all, that is all.

Q. 136. I am asking you whether you will hunt for that paper
and produce it here if you had it? A. No, sir.
454 Q. 137. You would not do it? A. No, sir.

Q. 138. Why, Mr. Allen? A. Not of my own volition, because it is immaterial; if you pay me I will, perhaps; I would not do anything for them without some object; it is no object to me to get it.

Q. 139. Do you understand you are summoned here as a witness?

A. Yes, sir.

Q. 140. Understand that you are bound to speak the truth, and ascertain what the truth is, when you are talking about the paper in your possession? A. Yes, sir.

Q. 141. Did you understand this when you were asked whether the paper was in your possession and you said you don't care whether it is or not?

A. I did not say that; I said it was not in my possession.

Q. 142. Didn't you tell me you did not know where it was; that it was in you possession and you did not know how it got away or where it went?

A. I did; I say I suppose in the natural order of events or course of business it had gone to the secretary's hands.

Q. 143. Who told you it was totally immaterial to the case and therefore you need not testify about it except in a very careless way? A. Nobody.

Q. 144. Why have you repeatedly stated to me it is immaterial?

A. That is my own opinion.

Q. 145. What has your opinion to do with a question you are asked to testify about?

A. I don't know that it has anything to do with it?

Q. 146. Why don't you answer the fact without saying it is immaterial?

A. I am trying to.

Q. 147. Isn't it a fact you don't want to know anything about this matter? A. No, sir.

Q. 148. Are you eager and anxious to know all about it and tell it?

A. No, I am not eager to tell it.

Q. 149. I should judge not; now I will ask you if you will go and
make a diligent and faithful search to find the contract which
455 you have stated was signed by Thomas Allen, president of
the St. Louis, Iron Mountain & Southern Railway Company,
and Mr. Kerens, for the Mississippi Valley Express Company, and
bring it here, if you find it?

A. Of my own volition, do you mean, will I do that?

Q. 150. Yes, sir. A. No, sir.

Q. 151. You will not? A. No, sir.

Q. 152. Now, I ask the examiner to tell the witness his duty, and to state it distinctly, and to adjourn the examination until he has searched.

Mr. Thoroughman asks leave to ask the witness before that a few questions.

Objected to by plaintiff.

Col. THOROUGHMAN: I ask leave to put a few questions.

Q. 153. If I understand, you have told Mr. Glover you were told that paper could not be found with you, but with Stephen D. Barlow?

Objected to.

A. Yes, I have stated that fact.

Q. 154. Now, do you intend to say that if that paper exists it is not in your control, but in the control of Stephen D. Barlow; is that what you mean to say? A. Yes, sir.

Q. 155. When you told Mr. Glover you are not of your own volition going to hunt for it, did you mean to say you have no right to control the papers of the secretary? A. No, sir.

Q. 156. What did you mean by that answer.

A. I mean if the secretary has any papers belonging to the company, and I should want them, that he would turn them over to me.

Q. 157. Simply because of your official relation to him?

A. Yes, sir.

Q. 158. And not because you are custodian of the paper?

A. Yes.

The witness was instructed by the examiner to make a diligent and faithful search for the paper referred to, and produce it as soon as convenient, said instrument being the contract between the St. Louis, Iron Mountain & Southern Railway Company and the Mississippi Valley Express Company, to be organized.

Subsequently the witness returned, and his examination was resumed as follows:

456 The WITNESS: All I can say is I found a copy of that contract in the possession of our secretary in the record book that he keeps for the purpose of recording contracts, a large volume.

Q. 159. What contract? A. This that you sent me out for.

Q. 160. Will you state what it was?

A. It is a paper, a contract between the Express Company and the Iron Mountain Railway Company, the Express Company that was to be.

Q. 161. Which express company? A. This one we have been talking about all the time.

Q. 162. The Mississippi Valley Express Company?

A. Yes; and Mr. Barlow objects to that book going out of his office, but he is making a copy of it and will furnish you a certified copy of the paper.

Q. 163. Did you look among your own papers?

A. Yes, I looked among my own papers. I had the original draft, but it was not perfect.

Q. 164. You found the original draft? A. Yes, sir.

Q. 165. Where is the original contract; do you know?

A. Mr. Barlow had it to make the contract.

Q. 166. He retained the original as an archive in his office, didn't he? A. Yes; he said that is in the auditor's office.

Q. 167. The original contract between the Mississippi Valley Express Company and the St. Louis, Iron Mountain & Southern Railway Company is where, sir?

A. In the auditor's office.

Q. 168. Who is the auditor? A. Mr. Wallace.

Q. 169. His given name? A. J. W.

Q. 170. And Mr. Barlow's name is—— A. Stephen D.

Q. 171. Mr. Allen, will you have a certified copy by day after tomorrow? A. Yes, sir.

Cross-examination by Col. THOROUGHMAN:

Cr-Q. 1. I will get you to state if that contract about which you have just now been speaking was ever entered upon, or anything done in pursuance or under its provisions between the Iron Mountain Railway Company and the contemplated Mississippi Valley Express Company?

A. Nothing more except the paper that was signed by the two parties.

457 Cr.-Q. 2. Was there ever anything done further than you have named in perfecting this express company?

A. Yes, we organized a department called the express department.

Cr.-Q. 3. You don't understand me, I mean was there ever anything done further than that you have named in perfecting the Mississippi Valley Express Company or was it abandoned?

A. No, it was abandoned.

Cr.-Q. 4. Never was any money paid in for the stock of the company to your knowledge? A. No, sir.

Cr.-Q. 5. Never was anything done in the execution of the contract further than putting the names of the parties to it?

A. That is all.

Cr.-Q. 6. Then the whole thing was abandoned and the Iron Mountain Railway determined to run an express department of its own and to terminate the Southern Express Company's contract? A. Yes, that is it.

Signature waived.

By consent of parties the further taking of these depositions was continued until Thursday, December 30, at 2 p. m.

ST. LOUIS, *December* 30*th*, 1880.

Parties met pursuant to adjournment, and the further examination of witnesses was resumed as follows.

R. C. KERENS, being recalled, testified as follows:

Examination by Mr. GLOVER:

Q. 151. When you were on the stand last you promised, if you could, to search for and produce before the examiner a copy of a contract which you testified had been entered into by the St. Louis, Iron Mountain & Southern Railway Company, and the Mississippi Valley Express Company to be organized; can you produce to the examiner now the original or a copy of that contract? A. Yes, sir; I hand to the examiner a copy of said contract, dated the 4th of May, 1880. I think it was signed latter.

(Paper referred to marked Exhibit No. 5.)

Q. 152. Did you ever sign any other contract than the pne of which this is a copy about this express company?

A. No, sir.

Q. 153. Did you ever sign for the Mississippi Valley Express Company, which was to be organized, any other contract
458 than the one you now show to the examiner, dated the 4th of May, 1880?

A. With the Iron Mountain Railroad?

Q. 154. Yes? A. No, sir.

Q. 155. So far as you know, the one of which this is a copy is the only one you ever entered into?

A. The only one with the Iron Mountain Railway Company.

Q. 156. Now you may state why you did not search for the contract, after being requested to search by the examiner, if you wish so to do, that is, that you understood Mr. Barlow would make a copy?

A. Yes, sir; and so I didn't bother myself about it.

Q. 157. That copy was placed in your hands, and you have handed it to the examiner as your answer?

A. Yes, sir; I have found it, read it, and know it is the same.

Cross-examined by Mr. THOROUGHMAN, counsel for defendant:

Cr.-Q. 1. You were about to state that you are not certain whether that contract was signed the day it bears date, or at a later date?

A. No; I am not certain about that.

Cr.-Q. 2. It may have been signed at a later date.

A. Yes; I can't state about that.

Cr.-Q. 3. Now what did the two contracting parties do in pursuance of that contract, in the way of entering on business under that contract, if anything?

A. They never did anything; just simply abandoned it.

Cr.-Q. 4. The project, after having gone as far as you have detailed in your testimony was abandoned?

A. Yes, sir; and the railroad express department organized. After full consultation the situation was accepted all around.

Cr.-Q. 5. You are now, as I understood you to state to Mr. Glover the other day, the manager of the express department of the Iron Mountain & Southern Railway Company?

Q. 163. Did you look among your own papers?

A. Yes, I looked among my own papers. I had the original draft, but it was not perfect.

Q. 164. You found the original draft? A. Yes, sir.

Q. 165. Where is the original contract; do you know?

A. Mr. Barlow had it to make the contract.

Q. 166. He retained the original as an archive in his office, didn't he? A. Yes; he said that is in the auditor's office.

Q. 167. The original contract between the Mississippi Valley Express Company and the St. Louis, Iron Mountain & Southern Railway Company is where, sir?

A. In the auditor's office.

Q. 168. Who is the auditor? A. Mr. Wallace.

Q. 169. His given name? A. J. W.

Q. 170. And Mr. Barlow's name is—— A. Stephen D.

Q. 171. Mr. Allen, will you have a certified copy by day after tomorrow? A. Yes, sir.

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A. Nothing more except the paper that was signed by the two parties.

457 Cr.-Q. 2. Was there ever anything done further than you have named in perfecting this express company?

A. Yes, we organized a department, called the express department.

Cr.-Q. 3. You don't understand me, I mean was there ever anything done further than that you have named in perfecting the Mississippi Valley Express Company or was it abandoned?

A. No, it was abandoned.

Cr.-Q. 4. Never was any money paid in for the stock of the company to your knowledge? A. No, sir.

Cr.-Q. 5. Never was anything done in the execution of the contract further than putting the names of the parties to it?

A. That is all.

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Signature waived.

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A. No, sir.

Q. 153. Did you ever sign for the Mississippi Valley Express Company, which was to be organized, any other contract than the one you now show to the examiner, dated the 4th of May, 1880? 458

A. With the Iron Mountain Railroad?

Q. 154. Yes? A. No, sir.

Q. 155. So far as you know, the one of which this is a copy is the only one you ever entered into?

A. The only one with the Iron Mountain Railway Company.

Q. 156. Now you may state why you did not search for the contract, after being requested to search by the examiner, if you wish so to do, that is, that you understood Mr. Barlow would make a copy?

A. Yes, sir; and so I didn't bother myself about it.

Q. 157. That copy was placed in your hands, and you have handed it to the examiner as your answer?

A. Yes, sir; I have found it, read it, and know it is the same.

Cross-examined by Mr. **Thoroughman**, counsel for defendant:

Cr.-Q. 1. You were about to state that you are not certain whether that contract was signed the day it bears date, or at a later date?

A. No; I am not certain about that.

Cr.-Q. 2. It may have been signed at a later date.

A. Yes; I can't state about that.

Cr.-Q. 3. Now what did the two contracting parties do in pursuance of that contract, in the way of entering on business under that contract, if anything?

A. They never did anything; just simply abandoned it.

Cr.-Q. 4. The project, after having gone as far as you have detailed in your testimony was abandoned?

A. Yes, sir; and the railroad express department organized. After full consultation the situation was accepted all around.

Cr.-Q. 5. You are now, as I understood you to state to Mr. Glover the other day, the manager of the express department of the Iron Mountain & Southern Railway Company?

A. Yes, sir.

Signature waived.

A. W. **Soper**, of lawful age, being produced, sworn, and examined on the part of the plaintiff, testified as follows:

459 Direct examination by Mr. **Glover**:

Q. 1. What relation do you sustain to the St. Louis, Iron Mountain & Southern Railway Company?

A. General superintendent.

Q. 2. How long have you been in the relation?

A. About ten years, sir.

Q. 3. Tell me what you know of a corporation that was formed, or that was to be formed and called the Mississippi Valley Express Company?

A. What I know of the Mississippi Valley Transportation Company?

Q. 4. Was it a transportation company?

A. An express company.

Q. 5. The name was the Mississippi Valley Express Company, or was it——

A. Well, no, I can't tell you whether transportation or express company.

Question repeated.

A. You are right about it, it was an express company; there was a talk with certain parties that they would organize an express company, and call it by that name, and that they would make a contract with the Iron Mountain & Southern Railway Company to do business over the road. The company was never organized and was never incorporated to my knowledge, and never did any business with the Iron Mountain Railway Company.

Q. 6. At what time was it contemplated to form that Mississippi Valley Express Company?

A. Well, it was about the time that we gave notice to the other express company to get off from the road.

Q. 7. What do you mean by "the other"?

A. The Southern Express Company, about that time.

Q. 8. It was before that time?

A. It was contemplated to form it about that time, yes.

Q. 9. Who were the parties to that intended organization?

Objected to, as immaterial.

A. There were Mr. R. C. Kerens—is this what I know of my own knowledge or what I heard?

Q. 10. No, what you know of your own knowledge.

A. I cannot tell you anybody but Mr. Kerens that was interested, except Mr. Allen and Mr. Marquand.

460 Q. 11. What Marquand? A. H. G. Marquand, of New York.

Q. 12. You mean the vice-president?

A. Yes, and some friends and acquaintances of his there, and some others in this city I understood to be there; I cannot give the names of them, except Mr. Lowry and Mr. Sheather.

Q. 13. What Sheather? A. Samuel Sheather.

Q. 14. Which Lowry? A. Henry Lowry.

Q. 15. Do you mean of this city? A. No, of New York.

Q. 16. Do you know there is a Henry Lowry in town, of the Mississippi Valley Transportation Company?

A. No, he is not the man.

Q. 17. Or Henry Lowry of the Jay Gould Barge Company from here to New Orleans isn't the man? A. No, sir.

Q. 18. The New York man was interested in the Mississippi Valley Express Company? A. Yes, sir.

Q. 19. What was the capital of this company, of this Mississippi Valley Express Company?

Objected to, same as before.

A. I don't know that it was decided what the capital should be, the thing was never organized or put in effect; I do not know what the capital was, that was decided on.

Q. 20. The interested were Thomas Allen?

A. No, I did not say Thomas Allen, I think Thomas Allen was not interested, it is my impression he was not interested. W. R. Allen was interested.

Q. 21. Who else? A. Mr. Marquand told me afterwards.

Objected to.

Q. 22. Did you ever see the articles of association?

A. No, sir; I never saw them.

Q. 23. In endeavoring to get up this enterprise of the Mississippi Valley Express Company, who did Mr. Kerens talk the subject over with?

A. I do not know, sir, who he talked it over with; I do think he talked the matter over with H. G. Marquand, of New York, and I think with several of our board of directors and Mr. Allen.

Q. 24. And with you?

A. With me, yes; several conversations I had with him about it.

461 Q. 25. How long were you negotiating with Mr. Kerens before you came to an understanding?

A. It might have been a couple or three months, perhaps; we talked for some time.

Q. 26. During the winter and spring?

A. Yes, sir.

Q. 27. Do you recollect when you sent your notice to M. J. O'Brien, Esq., general superintendent of the Southern Express Company?

A. I don't remember the date; it is there in that bill.

Q. 28. I will read this to you; I will read a letter which purports to be written by you, to wit:

"St. Louis, Iron Mountain & Southern Railway,
General Superintendent's Office,
St. Louis, *March* 20, 1880.

M. J. O'Brien, Esq.,
General Superintendent of the Southern Express Company,
Memphis, Tennessee.

Dear Sir: This company has come to the conclusion that it is to its interest to terminate the contract made with you on February 1, 1874, and have directed me to give you the notice contemplated in said contract, which will terminate the same in 60 days from this date. Other arrangements have been made, and if desirable you can turn it over at an earlier date. Personally I regret to sever the the pleasant relations existing for many years with yourself and officers, and hope for a continuance of the same between yourself and your successor.

Very truly, A. W. SOPER,
Gen'l Sup't."

Q. 29. Did you write that letter? A. I did, sir.

Q. 30. Put it in the mail? A. I did not put it in the mail.

Q. 31. Did you direct it to be mailed? A. Yes, sir.

Q. 32. Now, I will read you what purports to be a reply to that letter to Mr. O'Brien.

Objected to, as immaterial, incompetent, and irrelevant to any issue in the case.

Plaintiff's counsel reads the letter, as follows:

"Southern Express Company, Express Forwarders,
Office General Superintendent,
Savannah, *April* 1, 1880.

A. W. Soper, *Gen'l Sup't, St. L., I. M. & S. R. R., St. Louis.*

Dear Sir: Yours of the 20th ultimo, directed to Memphis, Tenn., reached me this morning, and I must confess that in view
462 of the pleasant business relations which have existed between our respective companies several years, I am surprised at the notice proposing to terminate same, and I will thank you to inform me what other arrangements have been made, which in the judgment of your company render dissolution with ours necessary, and would also ask whether the same terms and privileges which may be accorded to the other cannot be extended to this company so as to permit a continuation of its business on your lines. I expect to be in Nashville on or about the 5th inst., and will be gratified to have your reply directed to that point.

Respectfully, M. J. O'BRIEN,
Gen'l Sup't."

Q. 33. Did you receive that letter? A. Yes, sir.

Q. 34. What time did you receive it; the date it bears date—April 1, 1880?

A. Within a couple of days or so?

Q. 35. In due course of mail? A. Yes, sir.

Q. 36. In paragraph 31 of plaintiff's bill, Mr. Soper, I find a copy of a letter purporting to have been written by you to M. J. O'Brien, Esq., gen'l sup't So. Ex. Co., (abbreviation for Southern Express Company); it is in these words:

"St. Louis, *May 8th*, 1880.

"M. J. O'Brien, Esq., *Gen'l Sup't So. Ex. Co.*

Dear Sir: I am in receipt of your letter of May 3, and have referred it to Mr. Allen. We are somewhat surprised at your intimation that your continuation on the road should not end or interfere with the proposed operation of the new company. We are reminded of the uninterrupted and exclusive privilege you have enjoyed on this line for ten years past, and now that it is decided to change you cannot but see the importance of allowing the new people like privileges. Mr. Allen is determined about this matter, is personally interested with his friends, and I believe you cannot but decide with me the better policy would be to retire in harmony, and retain the friendly relations which have so far existed between the officers of the two companies.

I shall be pleased to learn your decision in the matter.

Yours respectfully, A. W. SOPER,
Gen. Supt."

To which the defendant's counsel objected, as before.

Q. 37. Did you write that letter?
A. I did sir.

Q. 38. Did you direct it to be mailed?
A. Yes, sir.

463 Q. 39. How was it addressed?
A. Addressed to Mr. O'Brien.

Q. 40. As general superintendent of the Southern Express Company? A. Yes, sir.

Plaintiff's counsel produces and shows to witness what purports to be an original letter, a copy of which has just been read from the 31st paragraph of the bill, and asks him what he knows about it.

Marked Exhibit No. 2.

A. I know that letter was dictated by me, sir, and signed by me.

Q. 41. And sent? A. And sent.

Q. 42. On May 8th? A. On May 8th; yes.

Q. 43. Who are the new people of whom you speak in this letter of May 8th, 1880; give the names of them as fast as you can?

A. There was Mr. Kerens, Mr. Sheather, Mr. Lowry, W. R. Allen, Mr. Marquand, and George Allen.

Q. 44. Had you any interest, Mr. Soper?

A. No; not any.

Q. 45. None through George?

A. None at this time; I had none; no interest in it; no, sir.

Q. 46. Did you at any time have an interest in the Mississippi Valley Express Company?

A. It was understood I should have no interest in it; I was afterwards interested. Mr. Marquand, after he came from New York, and after this matter was fixed up, advised me to take an interest.

Q. 47. How much was it? A. $2,000.

Q. 48. $2,000 or shares? A. $2,000, I think; it might have been $2,500; but I believe $2,000.

Q. 49. Was Mr. Lowry a director in the road?

A. Yes, sir.

Q. 50. Was John Sheather a director in the road?

A. Yes, sir.

Q. 51. Wasn't Henry Marquand vice-president?

A. Yes, sir.

Q. 52. His son had no connection with the road officially?

A. No.

Q. 53. But was a stockholder?

464 A. I think he was; Mr. Marquand—I have forgotten how that stock stood, whether he or his son had it, or whether he was to have an interest—there was no stock in this express company; he was to have an interest in it.

Mr. Thoroughman: Are you talking about Mr. Marquand owning stock in the express company that was to be formed, or are you talking about the stock he owned in the Iron Mountain?

A. I am not talking about the stock, but about the interest; there was no stock in it at all.

Q. 54. By Mr. Glover: Did Mr. Lowry, Mr. Sheather, Henry Marquand, his son, Thomas Allen, George Allen, or William R. Allen own stock in the St. Louis, Iron Mountain & Southern Railway Company, or did any of them, or did all of them?

A. I guess most all of them did; yes.

Q. 55. State what you know about that.

A. I can't state how many shares they held, or anything of the kind; they were the stockholdors in it; of course they were all stockholders in it except Mr. Marquand.

Q. 56. Well, I now read you from the 32 paragraph of the bill; copy of letter purporting to have been written by Thomas Allen, president of the St. Louis, Iron Mountain and Southern Railroad to M. J. O'Brien, gen'l sup't, Southern Express Co. It reads in this way:

"St. Louis, *May* 11, 1880.

M. J. O'Brien, *Gen'l Sup't So. Ex. Co.*

Dear Sir: In reply to your letter of the 7th, I have to say, that under the contract we have made, it will be impracticable to have the Southern Express company continue to do business on our line, as an express company, in our passenger trains, after the 26th inst.; you will, therefore, please to arrange your affairs, so that the new company may take up the business, without interruption, from and that date, when our contract with the Southern Express Company will have terminated.

Very respectfully, yours,

THOMAS ALLEN,
Pres't St. L., I. M. & S. R. R."

To which defendant's counsel objected, as before, to the foregoing letters.

Q. 57. What do you know about that letter of Mr. Allen to Mr. O'Brien?

465 A. I think that letter was sent, sir; I think I saw that letter before it was sent.

Q. 58. Wasn't it written at your request?

A. No, sir; it was not.

Q. 59. Do you know what is meant by "the contract we have made," the words used in the letter?

A. I suppose it refers to the contract that was made or intended to be made with the new company; whether it was made or not I don't know, Mr. Glover.

Q. 60. Could you state that there was a contract made between the St. Louis, Iron Mountain & Southern Railway Company and the Mississippi Valley Express Company, for carrying express matter on that road?

A. There was no such company; I never knew of or saw such a contract. There was an understanding there should be a contract, and I know what the terms of the contract were to be, but whether it was executed or not I cannot say, sir. There was no company to make the contract with.

Q. 61. But there were persons whom you mentioned going to form a company. Now wasn't there a contract made and signed by Mr. Kerens on behalf of the intended organization, the Mississippi Valley Express Company, with the Iron Mountain and Southern Railway Company?

A. I understood there was such a contract made.

Q. 62. Didn't you see it?

A. I don't think I saw it after it was signed; I saw the whole drawing up, and all the matter connected with it.

Q. 63. Who drew it up?

A. I think Mr. Kerens had some attorneys draw it up.

Q. 64. Who was the stenographic reporter?

A. Well, that I don't remember who.

Q. 65. Did you never see the gentleman there with William R. Allen, drawing up, fixing, and arranging that contract?

A. Yes; I think it was done in his office; that is so.

Q. 66. In whose office?

A. In W. R. Allen's office; I don't remember who it was though that drew it up.

Q. 67. You saw the stenographic reporter there?

A. Yes, sir.

466 Q. 68. Who was he? A. I don't know who he was.

Q. 69. Was that the only time that stenographic reporter was ever in your office, to your knowledge?

A. I don't think he was in my office at all.

Q. 70. I mean the Iron Mountain railway office?

A. I cannot say whether it was or not; I don't remember ever seeing him there; I don't know who he was.

Q. 71. You did not know the man? A. No, sir.

Q. 72. Don't you know his name? A. No, sir.

Q. 73. Would not know him if you were to see him?

A. No, sir; I would not know him if I were to see him.

Q. 74. You never saw the contract?

A. I never saw the contract after that time; I saw some parts of it talked over between Mr. Kerens, Mr. Allen, and myself, as regards the terms of it, but I never saw the contract after it was signed; never was any company organized, and the company afterwards decided to operate its own express; therefore I gave this matter no attention; we thought we were left and better retire, and it was decided best to let the company have the whole benefit of it rather than to divide it up.

Q. 75. I will read you from paragraph 41 of plaintiff's bill in this case what purports to be a letter written by Thomas Allen, president, to H. C. Fisher, Esq., div. sup't of the Southern Express Co., in these words:

"St. Louis, Mo., *May* 15, 1880.

H. C. Fisher, Esq., *Div. Sup't, So. Ex. Co.*

Sir: As by notice heretofore given you, the contract made by the Southern Express Company under date of February 1, 1874, will terminate the 26th inst. The St. Louis, Iron Mountain & Southern Railway Company has determined to transport all express matter, and to transact all express business on its own account, and through and by its own officers and agents, on and after the first day of June next, in its own cars and on and over its own roads. We should be glad to receive, transport, and deliver express matter you and your company may think proper to intrust to us.

Very truly, THOMAS ALLEN, *Pres't.*

To which defendant's counsel objects, the same as before.

Q. 76. Now, Mr. Soper, what do you know about the writing of that letter by Thomas Allen?

A. Yes; I think that letter was written to Mr. Fisher.

467 Q. 77. You saw it? A. Yes, I think I saw it.

Q. 78. Can you tell me how it happened that, having first assumed that the Southern Express Company should not operate at all upon the road, it was determined to allow it to do so under the letter written to that effect, May 15, 1880, to Mr. Fisher, which I have just read; can you explain to me how that happened?

A. That was not intended to say to them they should operate on the road any more than before, but that the Iron Mountain would operate its own express business, and carry express business that they might turn over to the Iron Mountain express department; that is the meaning of that letter.

Q. 79. I ask you if you can tell me why that change was made? A. Yes, sir, I can tell you.

Q. 80. From the programme laid down by Mr. Allen, in his letter, on the 11th of May, 1880, in which he says, "it will be impracticable to have the Southern Express Company continue to do the business on our line;" and the programme laid down by the letter of May 15, 1880, in which he says, "we will be glad to have them to do business."

A. Well, it was afterwards decided, after the first arrangement was made, they would not organize any express company, but would give the revenue and the business to the Iron Mountain Railway with its earnings, and have no express company to operate.

Q. 81. But why was that change made? A. Because it was thought it would be more desirable to the railway company to have it and have the profits connected with it; it would go to the railway company, and they had better have it.

Q. 82. No, that is not the fact. A. I thought it was.

Q. 83. Why did you first state the Southern Express Company should not operate on your road at all and afterwards open the door to them, and say you should be pleased to have them?

A. No, we said we would be pleased to receive any merchandise they wanted to send over the road, giving us their shipments, and we would be glad to take care of it; but did not say to them in that letter, or intend to, that they should remain on the road any more than we did when we asked them to get off.

468 Q. 84. Then on the 15th of May, as you understand Mr. Allen's letter, 1880, it was the purpose of the St. Louis, Iron Mountain & Southern Railway to exclude the officers and agents of this Southern Express Company from the road but to receive their express matter?

A. Yes, same as from anybody else, we never decline to do that, you know; always intended to do that, we wanted their business.

Q. 85. Do you hold that position now? A. Yes, very anxious to do all the business anybody will bring to the Iron Mountain & Southern Railway express department.

Q. 86. But won't let them come on your road?

A. Well, they are on there and we don't want them there, that is all; we are about to get them out of there; they are there.

Q. 87. You only submit to have them there under the the order of the court?

A. That is all, sir.

Q. 88. You still claim the right to exclude them from the road?

A. We still claim the right to do our own express business.

Q. 89. You claim the right to exclude the Southern Express Company from your road?

Objected to, as implying a proposition of law.

A. Well, we have said to them, we want them to get off; of course we do, we want them to get off there.

Q. 90. Is that your position now?

A. Yes, sir.

Q. 91. If you can help it they shall not operate on your road?

A. Yes, sir.

Q. 92. You only submit to it under the injunction? A. Yes, sir.

Q. 93. Col. Soper, was the contract which was made between the Mississippi Valley Express Company and the St. Louis, Iron Mountain & Southern Railway Company, one exclusively in favor of the Mississippi Valley Express Company, I mean by that, giving the Mississippi Nalley Express Company, the right and only right to run an express business on the road?

Objected to, as immaterial and irrelevant.

469 A. It was framed, Mr. Glover, similar to what other express companies were, and as far as any exclusiveness was concerned, it was with the intention that they should have the same rights and privileges there of other express companies—do it in their place.

Plaintiff's counsel shows the witness what purports to be a copy of a telegram dated St. Louis, April 5th, 1880.

Addressed M. J. O'Brien, general superintendent Southern Express Company: "Your letter just received; the contract has been made with other parties, execlusive—same as your own was.—A. W. Soper."

Objected to, on the ground that it is irrelevant, and that it is incompetent, and the further ground that it is not the original paper, and does not purport to be; the paper read from by counsel for the plaintiff being assumed in the question to be a copy of some paper.

Plaintiff's counsel hands paper purporting to be as above named and asks him what he knows about it?

A. I sent such a message to Gen. O'Brien, and think this is a copy of it.

Paper marked Exhibit No. 3.

Q. 94. Mr. Soper, when did the St. Louis, Iron Mountain & Southern Railway Company make its last report to the railroad commissioners of the State of Missouri?

A. I think it was a year ago, September or October; I cannot remember exactly, sir.

Q. 95. Why hasn't one been made for the year 1880?

A. Papers are being prepared, I believe; I don't know but that they have been sent in; I can't say that.

Q. 96. Mr. Soper, I wish to call your attention to section 841, of the Revised Statutes of Missouri, 1879, vol. 1. I will read section 841:

"*Railroad Companies to make Annual Reports.*

Contents: Every railroad company incorporated or doing business in this State or which shall hereafter become incorporated or do business under any general or special laws of this States, shall, on or before the first day of September, 1875, and annually thereafter on or before the first day of August, transmit to the office of the 470 railroad commissioners a full and true statement under oath, of the proper officers of said corporation, of the affairs of the corporation as the same existed on the first day of the preceding July, specifying—

First. The amounts of capital stock subscribed, the number of shares, and the par value thereof.

Second. The names of the owners of its stock, the amount owned by them, respectively, and the residence of each stockholder as far as known.

Third. The amount of stock paid in, and by whom.

Fourth. The amount of its assets and liabilities.

Fifth. The names and places of residence of its officers.

Sixth. The amount of funded debt.

Seventh. The amount of floating debt.

Eighth. The estimated value of the road bed, including iron and bridges.

Ninth. The estimated value of the rolling stock.

Tenth. The estimated value of stations, buildings, and fixtures.

Eleventh. The estimated value of other property.

Twelfth. The length of single track on main line.

Thirteenth. The length of double track on main line.

Fourteenth. The length of branches, stating whether they have single or double track.

Fifteenth. The aggregate length of siding and other tracks above enumerated.

Sixteenth. The number of tons of through freight carried during the year preceding the making of the report.

Seventeenth, The number of tons of local freight carried during the same time.

Eighteenth. The monthly earnings for the transportation of passengers during the same time.

Nineteenth. The monthly earnings for the transportation of freight during the same time.

Twentieth. The amount of expenses incurred in running and management of passenger trains, in the running and management of freight trains, and in the running and management of mixed trains during the same time.

Twenty-first. The expenses incurred in the running and management of the road, including the salaries of officers for the same time, which shall be reported separately.

Twenty-second. The amount expended for repairs, including the maintenance of roadway, repairs, a renewal of bridges, ties, and iron:

Twenty-third. The amount expended for other improvements not included in the last subdivision.

Twenty-fourth. The amount expended for motive power, cars, station houses, and all other buildings, and fixtures, including all other expenditures in the management and running of said road.

471 Twenty-fifth. The rate of fare for passengers for each month during the same time; through and way-passengers separately.

Twenty-sixth. The tariff of freights, showing the change of tariffs, if any, during the same time.

Twenty-seventh. A copy of each published rate of fare for passengers and tariffs of freights, issued for the government of its agents during the same time, and whether the rate of fare and tariffs of freight in such published list are the same as those actually received by the company, and if not, what were received.

Twenty-eighth. What express companies run on its roads, and on what terms and conditions, and the kinds of business done by them.

Twenty-ninth. What freight and transportation companies run on its roads and on what terms, and whether such freight and transportation companies use the cars of the railroad company or cars furnished by themselves.

Thirtieth. Whether the freight or cars of such transportation companies are given any preference in speed or order of transportation, and if so, what?

Thirty-one. What running arrangements it has with other railroad companies, and answer such additional interrogatories as such commissioners may make and propound to said railroad companies; and this section shall apply to the president, directors, and general officers of every railroad company now existing, or which shall hereafter be organized and exist in this State, and to every lessee, manager or operator of any railroad within this State."

Q. 97. You notice by the section I have just read, that every railroad in the State is to report to the railroad commissioners the matters mentioned, and at the times in that section mentioned. I will ask you if the St. Louis, Iron Mountain & Southern Railway Company did make such a report to the railroad commissioners in August last?

A. I cannot say, Mr. Glover, whether it was made or not, sir; I should like to look over the record.

Q. 98. Will you do so? A. I will.

Q. 99. If such a report was made, and is accessible to you, will you produce a copy of it here to the examiner, to be annexed to your testimony? A. I will.

Q. 100. Has your company ever made a report under the law creating the railroad commissioners of this State, which law took effect in 1875?

Defendant's counsel objects, on the ground that it is totally immaterial to this plaintiff whether the report has ever been 472 made or not, as not pertinent to any issue presented in the pleadings in this case; if it has not been done, it does not lie in the mouth of this plaintiff to complain. The only steps that can be taken for any breach of the statute read to this witness must be at the hands of the State of Missouri alone, and cannot be taken advantage of by this plaintiff, or complained of.

A. It has.

Q. 101. Have you copies of those reports on file in your office?

A. I suppose I have.

Q. 102. What reports were made?

A. We made reports for two or three years, made them regularly according to what the commissioners have asked for; intended to do so.

Q. 103. I am not asking, you will observe, anything about what the commissioners asked for, or for your replies to their request, but for the reports which it is the duty of the railroad to make, as I suppose, under section 841 without being asked.

A. I will explain, Mr. Glover, that they got ready a lot of blanks covering all those questions, the commissioners did, which is a matter requiring a good deal of information, you know, of things I could not always give them, but they get ready a lot of blanks and send them to the railway companies and ask us to fill them out, asking each one of those different questions according to the act, which we fill out according to the best of our knowledge and send to them.

Q. 104. Observe, Col. Soper, that this section 841, requires you, without being asked, to report the matter under the heads from 1 to 31, inclusive; and then, besides that, which you are to do without being asked, you are to answer such additional inquiries as such commissioners may make or propound to the railway company; now, I am not asking you whether you report in answer their inquiries, but whether you made any reports under the section 841?

A. Yes, we made reports.

Q. 105. Independent and without interrogatories?

A. Without any further interrogatories.

Q. 106. Then you say you have, if I understand it, to make a report of a certain kind, if not asked at all, then if they asked anything you must answer it; but I am not asking what they called on you for, but what you are to do under the law?

473 A. We made a report to them; they furnished blanks to assist us in the matter; they sent blanks, the commissioners have, and we fill them up and send them back to them.

Q. 107. Complying with the law?

Defendant's counsel objects to anything as to whether the law has been complied with or not, or whether blanks have been furnished by the railroad commissioners or not, and on the ground that the whole inquiry relating to this subject-matter is not pertinent to anything involved in the suit, and as irrelevant.

Q. 108. You have reported then, you think, in accordance with this law in 1876–'7–'8–'9–'80 to the railroad commissioners?

A. I cannot say the report was made for 1880, but I think for every other year.

Q. 109. Have you those reports on file in the office in print?

A. In print or writing.

Q. 110. If you have them in writing I would have to ask you to furnish a copy at our cost; if you have them printed you can give us a copy, I suppose?

A. They are partially in writing and partially in print; certain questions in print, and then we write in the answers and fill the figures in as they ask.

Q. 111. Will you furnish me with a copy of your reports under that law so far as they are made?

A. At your expense?

Q. 112. Yes, sir? A. Yes, sir.

Q. 113. If you have them in print I suppose there will not be any?

A. It is a long job, a big volume—voluminous matter.

Q. 114. I am trying to find whether they are in print?

A. They are partially in print and partially in writing.

Q. 115. Will you produce that here? A. The copies?

Q. 116. The originals, that we may see them and order copies if we want them.

A. We would hate to lose them, they are very valuable.

Q. 117. I do not want to take them out of your hands; will you produce them here, and keep them in your possession?

A. Yes, sir.

Q. 118. When will you do that?

A. Whenever you want them.

Q. 119. Will you exhibit them to Col. Thoroughman in his office so I may look at them? A. Yes, sir.

474 Q. 120. We may have them there?

A. Yes, have them there, any time.

Q. 121. Now, what reports have the board of directors or officers of the St. Louis, Iron Mountain & Southern Railway Company made to the corporation under its charter to the stockholders?

A. They make an annual report every year.

Q. 122. Have you got those reports, are they in print?

A. Yes, sir.

Q. 123. Will you furnish me a copy of each of them for the last five years?

A. I can if it can be done, I can furnish you the bound volume of them, I guess.

Plaintiff produces and shows to witness pamphlet with its title, "6th Annual Report of the President and Directors of the St. Louis, Iron Mountain & Southern Railway Company to the Stockholders, 1879." St. Louis Globe-Democrat Job Printing Company, 1880; it is a pamphlet of forty-two pages; it is marked Exhibit No. 4, and asks witness what that is.

A. It is the report of the operations of the road for the preceding year and of its standing debt, &c.

Q. 124. Report to whom? A. Report to the stockholders.

Q. 125. It is the report of the management of the directors?

A. Yes.

Q. 126. And its officials to the stockholders? A. Yes.

Q. 127. Did you make it up, Mr. Soper?

A. A good portion of it, sir; not all of it.

Q. 128. It was revised by you?

A. All the portion I make up is revised by me, sir.

Q. 129. Is it correct? A. I believe it is.

Q. 130. Who else had any hand in the making of it?

A. The figures are made—the president makes a portion of it and the auditor.

Q. 131. Who published it; I do not mean the printer, but under whose auspices was it given to the public?

A. Under the president's.

Q. 132. Under the auspices of the St. Louis, Iron Mountain & Southern Railway Company?

A. Yes, by its president.

Q. 133. It is their official act, it is? A. Yes, sir.

475 To all the questions and to the paper or pamphlet being put in the record as evidence, defendant's counsel objects on the ground that it is irrelevant to any issue in this case.

Q. 134. I will ask you to file that as part of your testimony.

Objected to.

(At this point, by consent, the further examination of the witness was continued until Dec. 31, 1880).

St. Louis, December 31, 1880.

Parties met pursuant to adjournment. The examination of A. W. Soper was resumed as follows:

Q. 135. Mr. Glover—Have you now, and will you produce and show to the examiner the report of the St. Louis, Iron Mountain & Southern Railway Company for 1876 to the Railroad Commissioners under the Act of the General Assembly of Missouri passed in 1875?

A. I think I have the report, and if so I will produce it; I understand they were sent up to Col. Thoroughman's office yesterday, all of those reports.

Q. 136. You will remember that I asked you the question before, and you promised me that I should have access to them and that I could examine them in the office of Messrs. Thoroughman and Pike, attorneys of the railroad. I called there, but was unable to procure them from Mr. George Allen; I have not seen them; will you now state to the examiner whether you have them here present?

A. I have not, but would say in that connection George Allen has nothing to do with those papers; I told my clerk to get those papers together with the annual reports, and send them to Col. Thoroughman's office the day after the examination; yesterday I was attending to some other matters and supposed it had been done; of course if they are not there I can not produce them; if they are you shall have them.

Q. 137. Can you tell whether there are now in the office of the St. Louis, Iron Mountain & Southern Railway Company such reports as I have asked for, to wit: the reports to the Railroad Commissioners of Missouri under the Railroad Commissioners' Act of 1875, and amendments thereto since, or not?

A. I cannot say; I suppose there are, but I cannot say positively, sir.

476 Q. 138. Having called at the office of your railway company for the reports I have just mentioned, and also for the reports of the President and Directors of the St. Louis, Iron Mountain & Southern Railway Company, from 1875 to the present time, I did receive from Col. Thoroughman five pamphlets, purporting to be the second annual report of the President and directors of the St. Louis, Iron Mountain & Southern Railway Company to the stockholders, 1875; 3rd annual report of same to the same, 1876; 4th annual report of same to the same, 1877; 5th annual report of same to the same, 1878; 6th annual report of same to the same, 1879. The last named was produced on your former examination, and exhibited with your examination. I hand you a pamphlet now, Col. Soper, purporting to be the second annual report of the President and Directors of the St. Louis, Iron Mountain & Southern Railway Company to the stockholders, 1875, and ask you to examine it and state what it is.

A. It is a report of the operations and condition of the railroad for the year 1875 or 1874.

Q. 139. Report made in 1875 for operations of 1874, I apprehend, Col. Soper?

Objected to, as irrelevant.

Q. 140. For the year ending December 31, 1875?

Objected to, as irrelevant.

Pamphlet was marked Exhibit No. 6.

Q. 141. Is it correct; is that a publication put forth by the St. Louis, Iron Mountain & Southern Railway Company, under the auspices of its board of directors and officers?

A. Yes, sir.

Plaintiff's counsel produces and shows to witness another pamphlet, entitled "3d Annual Report of the President and Directors of the St. Louis, Iron Mountain & Southern Railway Company to the Stockholders, 1876," and requests the witness to examine it, and to state what it is?

A. It is a report of the operations of the road for 1876.

Q. 142. A similar report to the one of the previous year?

A. Yes, sir.

Q. 143. Is it correct? A. I believe it is.

Defendant's counsel objects to the production of this report, and to what the witness has said in regard to it, as irrelevant.

477 Q. 144. Can you state whether the pamphlet you hold in your hand is a publication of the St. Louis, Iron Mountain & Southern Railway Company, put forth to the public by its board of directors and officers? A. Yes, sir; it is.

Report marked Exhibit No. 7.

Plaintiff's counsel produces and shows to witness a pamphlet entitled the "4th Annual Report of the President and Directors of the

St. Louis, Iron Mountain & Southern Railway Company to the Stockholders, for 1877," and asks the witness what it is.

A. Similar to the other annual report for the year 1877.

Same objection as before.

Paper marked Exhibit No. 8.

Plaintiff's counsel produces and shows to witness a pamphlet entitled "5th Annual Report of the President and Directors of the St. Louis, Iron Mountain & Southern Railway Company to the Stockholders, for 1878," and asks the witness to state what it is.

A. It is the same report for 1878.

Same objection as before.

Paper marked Exhibit No. 9.

Q. 145. All these reports, Colonel, which you have named are publications of the Iron Mountain and Southern Railway Company by its board of directors and officers to the stockholders? A. Yes, sir.

Q. 146. Now, when will you show me whatever there may be in your office in regard to the reports of your railway company to the said railway commissioners?

A. This afternoon, if they are there.

Q. 147. What time?

A. Any hour convenient to yourself; at 3 o'clock, if you wish.

Q. 148. Will you produce and attach to your examination your tariff rates of the common freights for 1875–6–7–8–9–80?

A. I will, if we have them. It may be that one single paper will cover the whole time.

Q. 149. When will you do that?

A. This afternoon at 3 o'clock.

478 Q. 150. I will put to you now the general question: Has the St. Louis, Iron Mountain & Southern Railway Company, for the last few years, been doing a successful or unsuccessful railroad business, and is it doing at this time——

Defendant's counsel objected, as incompetent and irrelevant.

A. That is questionable, sir.

Q. 151. Has it been doing a bad and unsuccessful business?

A. It has not been doing as profitable a business as it has, sir. Its stockholders are not happy. It has been paying its expenses, but has made no profits for its stockholders.

Q. 152. What do you consider to be the value of the property of the St. Louis, Iron Mountain & Southern Railway?

Objected to, as irrelevant.

A. I believe the property is worth thirty-five millions of money, considering its prospective increase of business.

Q. 153. I wish to know what it is worth now?

A. That is the only thing we can judge upon as to its value.

Q. 154. I wish you to give me an estimate of what it is worth now, leaving out the prospective increase.

A. Well, I consider it is worth that now, with that consideration. There is no other way of calculating on railroad property that I know of, as to what it is worth to-day. We look upon its business as to what it will naturally grow to.

Q. 155. Will you tell me what the floating debt of that road is?

Defendant's counsel objected, as irrelevant.

A. Several hundred thousand dollars; I cannot say exactly, sir; a very small amount of money though for its capital.

A. 156. You mean it has only $300,000 floating debt?

A. I said several.

Q. 157. Several don't mean anything; it means two or fifty.

A. I cannot say what it is; I think it is over $500,000, on account of the extraordinary expense in the purchase of real estate, steel rails, and new work done. This year we have got a small floating debt.

Q. 158. Colonel, has the St. Louis, Iron Mountain & Southern Railway Company ever had a floating debt under a million dollars? A. Yes, sir.

Q. 159. When?

Objected to, as leading.

A. Several times.

479 Q. 160. Col. Soper, has the St. Louis, Iron Mountain & Southern Railway Company any money invested in appliances for operating its express department?

Objected to, as leading and irrelevant.

A. It has.

Q. 161. How much? A. I cannot say how much.

Q. 162. It is not your exact office to know, but a general idea. A. Some forty or fifty thousand dollars or so.

Q. 163. How much? A. Whatever it cost to pay for safes, equipment of the express department, offices, and all this sort of thing; I cannot say how much it amounted to.

Q. 164. But you named the sum? A. I think it may be some forty or fifty thousand dollars.

Q. 165. Did you embrace in that investment here in St. Louis, or all between here and Texarkana?

A. All between here and Texarkana, including St. Louis.

Q. 166. Is it nearer, in your opinion, fifty than forty thousand dollars?

A. I don't know which is the nearest, sir.

Q. 167. Can you give me an idea how many employees belong to the St. Louis, Iron Mountain & Southern Express department; how many employees you have in that particular department?

Objected to, as irrelevant.

A. Most all of our employees are connected with the railroad in other capacities, and simply attend to the duties of the express department as a part of the business.

Q. 168. Is there such an official or person on your railroad train as an express messenger?

Objected to, same as before.

A. Yes, sir.

Q. 169. Where does he ride?

A. He rides in charge of express matter of the St. Louis, Iron Mountain & Southern Railway Express department.

Q. 170. In the baggage car?

A. In the baggage car or express car.

Q. 171. Who is the officer of your express department, who has its vouchers and files showing its accounts paid and dealings; who is the man?

A. Mr. Kerens, the manager, or Superintendent Aikin.

480 Q. 172. Can you furnish me with your express receipts?

A. Yes, sir.

Q. 173. I mean the papers which show the contract which you make with the shippers. When a man comes to you to ship anything through your express department by a written form of contract, which you have got, which you deliver to him, you say, received of him so much to be transported, so and so, on such and such conditions?

A. Those receipts?

Q. 174. Yes? A. Show you the blanks, you mean?

Q. 175. Yes, I want the form of contract you make with your express department, the St. Louis, Iron Mountain & Southern Railroad through its express department makes with shippers on through express trains, from end to end of your line, or express freights that don't go through the whole line, but upon express freights, if any, which you receive and contract to send over other lines of road, say, from Texarkana to New York, from St. Louis to Galveston, and other like points; can they be furnished at 3 o'clock, at Col. Thoroughman's office to us? A. Yes, sir.

Q. 176. Col. Soper, can you tell me whether the St. Louis, Iron Mountain & Southern Railway Company has held since 1875, and has now, any contract for carrying the mails for the Government of the United States?

Objected to, as irrelevant.

A. It has.

Q. 177. Is that contract in writing? A. It is.

Q. 178. Can you tell whether it is on file among the archives of your railway company? A. It is.

Q. 179. In whose particular care would it be?

A. In the secretary's.

Q. 180. Who is the secretary?

A. Mr. Stephen D. Barlow.

Q. 181. Will you be kind enough at the same time that you exhibit those other things to me in the presence of Col. Thoroughman, at 3 o'clock, to show me that?

A. I don't know as there is any objection to it; (addressing Col. Thoroughman,) I don't know whether those fellows ought to have all our private matters and papers to know everything about that railroad. You will know more about it than we do by and by.

481 Q. 182. There is something of this sort in the law, that whoever has any papers pertinent to the issue in the case must produce them, and your compensation for that is to require us to produce like papers.

Q. 183. You haven't said that you will do that.

Col. THOROUGHMAN: All papers pertinent to the inquiry in litigation must be given out, but he is not required to lay bare his business of every kind, and if a case of that sort arises we will leave that to the court.

WITNESS: I will say that we have a great deal, perhaps, of secret service that has nothing to do with the business.

Col. THOROUGHMAN: That is unimportant; I object to it going down What is proper and right we will produce, and if we determine it is right to produce that, we will do it; if not, we will appeal to the court.

Q. 184. What is the date, if you remember, of this mail contract?

Objected to, as incompetent.

A. There are several dates, as they have been increased—as the rate would be increased every year or every six months, or whenever it was increased, according to the weights of the mails, we have received new contracts.

Q. 185. Was there any correspondence between your road and the Postmaster General in regard to this affair of your carrying the mails?

Objected to, as incompetent.

A. Yes, sir.

Q. 186. Is that on file in the office of the secretary of the St. Louis, Iron Mountain & Southern Railway? A. No, sir.

Q. 187. Where will it be found, Col. Soper?

A. In my office.

Q. 188. In the office of the superintendent? A. Yes, sir.

Q. 189. Will you show us that and oblige us?

Objected to.

A. Yes, I will, if it is decided that you are entitled to it.

Q. 190. That is decided by Col. Thoroughman?

A. Yes, sir.

Q. 191. Tell me, as a matter of fact, how much car room has the Post Office Department had on your train; half a car, whole car, two cars on a passenger train, or how much?

Objected to, as incompetent.

482 A. Sometimes half a car, sometimes two-thirds of a car, and sometimes a whole car.

Q. 192. I suppose, Col. Soper, that the amount or quantity of space which the Postmaster General is entitled to under the mail contract is a thing specified in the contracts themselves, they will show? A. Yes, sir.

Q. 193. Under the present contract, how much room does the railroad furnish to the post office service; don't they have a whole car?

Objected to, as irrelevant; the best evidence would be the contract.

A. They have the use of a whole car.

Q. 194. Each car is about 60 feet long? A. No, sir.

Q. 195. How long? A. About fifty feet.

Q. 196. How broad? A. The usual width.

Q. 197. I don't know what that is, Col. Soper.

A. About 9 feet and a half.

Q. 198. How many trains a day is the mail transported on, at present, over your road?

Objected to, as incompetent and irrelevant.

A. On all trains except the De Soto train, I believe.

Q. 199. Two trains a day? A. Yes, sir.

Q. 200. There are two mail trains a day? A. Yes, sir.

Q. 201. Each way two trains a day? A. Yes, sir.

Q. 202. What officer of the St. Louis, Iron Mountain & Southern Railway Company has charge of the vouchers showing the payments by the United States to your railroad for mail service; is that your office or is it Mr. Wallace's?

Objected to, as irrelevant.

A. In the auditor's office; Mr. Wallace.

Q. 203. Will you be so kind as to show us the vouchers?

Objected to.

A. I will, if it is decided that you have a right to have them.

Q. 204. Mr. WHITFIELD: Col. Soper, how long has the railroad been furnishing the United States mail an entire car?

A. Over a year, sir; I don't remember the exact date it was put on.

Q. 205. Have you been since 1878?

A. It might have been nearly two years; yes, sir; perhaps two years; in that neighborhood somewhere; it is over a year.

483 Q. 206. Who has immediate custody of the mail matter on the trains?

A. The mail messengers, Government officers of the Post Office Department.

Q. 207. Do Government wagons take the mails to the railroad, or do you receive them at the post office?

Objected to, as it is regulated by law and is irrelevant.

A. The Government delivers it to our trains.

Q. 208. Receives it at your trains to, doesn't it?
A. Yes, sir.
Q. 209. How often does the Government make a settlement with you in point of fact?

Objected to, as irrelevant.

A. They remit us, pay us monthly.

Objected to.

Q. 210. Do you examine the contents of the mail bags?

Objected to, as irrelevant.

A. No, sir.

Answer objected to by defendant's counsel.

Q. 211. Does the mail messenger pay first-class passenger fare, or pay passenger fare as a regular passenger?

Objected to, as irrelevant.

A. The Government pays the railway a certain amount of money including its messengers and with provisos that we shall—

Defendant's counsel objected to the statement of the contents of the contract; the contract is the best evidence.

Witness (continuing)—pass certain officers in the employ of the Government or mail service.

Q. 212. There are chairs and some other furniture in those mail cars, are there not?

Objected to, as leading.

A. I believe they have a chair to sit in, those fellows.
Q. 213. State whether or not the railroad company charges anything for the transportation of that chair?
A. We allow them to take a chair into the car with them when they want it.
Q. 214. Mr. Soper, are you familiar with the express business, as it has been conducted by the plaintiff on your railroad?
A. I am, sir.
484 Q. 215. As conducted by the plaintiff, did the railroad company have anything to do with the handling of the plaintiff's express freights or matter?
A. It has assisted them whenever it was necessary to hurry the train along, sir.
Q. 216. To hurry the train along? A. Yes, sir.
Q. 217. As a matter of courtesy, or a matter of right?
Q. As a matter of courtesy.
Q. Who brought the express matter to the railroads?

Objected to, as irrelevant.

A. Our local agents, in a great many instances, did it and delivered it.

Q. 219. I ask if you are familiar with the plaintiff's express business; who brought the plaintiff's express business to the train?

A. The Iron Mountain Railroad agents in a great many instances brought it at all local stations; they were also the plaintiff's agents.

Q. 220. Were they acting as the agents of the Iron Mountain Railroad when they brought it there?

A. They were in the employ and on our pay rolls as agents.

Q. 221. Do you swear that the Iron Mountain Railroad agents as agents of the Iron Mountain Railroad brought the Southern Express Company freight to the Iron Mountain Railroad train?

A. I do, sir.

Q. 222. Who brought it to the trains at St. Louis?

A. The express company here.

Q. 223. Who took it away from the trains at St. Louis?

A. The express company.

Q. 224. How much did the express company pay the Iron Mountain Railroad to have its agents, the agents of the Iron Mountain Railroad, bring the freight to their trains at the way stations?

Objected to, as irrelevant.

A. I can't say; I understood they were paid a small percentage on their business to have it properly cared for, in order to have them take an interest in taking care of the business.

Q. 225. Who paid it?

485 A. The express company paid the Iron Mountain Railroad agents.

Q. 226. I did not ask that question.

A. I understood that to be the question.

Q. 227. I asked how much they have paid the defendant; the plaintiff is the Southern Express Company, and the defendant is the Iron Mountain & Southern Railway Company; how much the plaintiff paid the defendant to have the defendant's agents to bring express freight to the trains at way-stations?

A. They pay them nothing.

Q. 228. Well, didn't the plaintiffs pay those agents or persons who had to carry the plaintiff's freight to the train at way-stations?

Answer objected to by defendant's council.

A. I have understood they paid them a small percentage for doing their work.

Col. THOROUGHMAN: I object to your stating what you understand; state only the facts in your knowledge.

A. I cannot state that from my own knowledge.

Q. 229. Did or not the railway pay them for that service?

Objected to, as irrelevant.

A. I have never seen them paid for that service.

Q. 230. What is your official relation to the company defendant?

A. I am general superintendent.

Q. 231. But you don't know whether they have paid for that service or not?

A. I answered you generally; I have understood you people paid them a small percentage.

Q. 232. I asked you then if the railroad paid them, and you said you had never seen them pay it, and I want you to give a more positive answer, and when unable to do it under oath, it occurred to me possibly I had mistaken your connection with the company? A. If I can I mean to give a fair answer.

Q. 233. Let us have it.

A. A fair answer to your question is, I have always understood your people have paid our agents a small percentage on your business to take care of it.

Q. 234. Then I asked you if the railroad company paid those agents for that service that they performed?

A. I said no, sir.

486 Q. 235. You say so now, "no, sir"?

A. I say the railroad company does not pay the express agents for doing your business; we pay them nothing except for our own service.

Q. 236. Who, then, brings the plaintiff's express matter to the train?

A. In some cases your people bring it to it, and in some cases our agents have done the service.

Q. 237. Your agents being the agents of the express company also?

A. You make them agents.

Q. 238. In what capacity do they act when they bring that express matter to the train, as the agents of the railway company or as agents of the express company?

A. We consider all our agents' and employees' first duty and business is to attend to the business of the railway company, and we consider them all the time our agents; they carry the mail service in the same way at certain stations, and take charge of the mail and carry it in the same way.

Q. 239. Do you understand that the man is employed or being agent for two different persons at one time?

A. He may be; yes.

Q. 240. Do you mean to say that these way-station agents are only agents of your railroad, or do you mean to say that they are agents of the railroad and of the express company too?

A. I have said they were your agents; that you appointed them and paid them, as I have understood, for doing that service.

Q. 241. Then give me your reasons why you say that sometimes your agents bring the Southern Express matter to the trains?

A. I wish to say they act in the service of your company and ours together; in St. Louis, for instance, you have a large amount of business to employ your own people exclusively, outside of any of our people; but at local stations along the line of the road you use our own agents to do that service.

[Q.] 242. We use the individuals who are your agents, you mean?
A. Yes, sir.

Q. 243. We don't use your agents, but the individuals who are your agents is what you mean?

487 A. That is what I mean; you use our agents to do that business.

Q. 244. Then you do mean your agents bring the plaintiff's express matter to the trains at those way-stations, or do you mean that the individuals who are our agents at those points, in their capacity as agents of the plaintiff, bring the plaintiff's express matter to the trains?

A. Yes, of course; that is plain enough.

Q. 245. There is a great difference between saying your agents do a thing and meaning our agents for other things.

A. I have said our agents are employed by your people, and they brought this express matter at local stations to our train.

Q. 246. To whom do they deliver that matter when they get it to the train? A. To the messengers.

Q. 247. To the plaintiff's messengers?

A. To the plaintiff's messengers. They don't do it now; they did it before. I believe none of our agents are your agents now.

Q. 248. To whom do they deliver it now; that is, to whom do the plaintiff's messengers deliver the plaintiff's express matter when they get to the train?

A. They deliver it to the man you have in charge of the business on the train.

Q. 249. What is he commonly called? A. A messenger.

Q. 250. Who takes care of it while it is on the train?

Objected to, as leading and irrelevant.

Q. 251. Your messenger takes charge of the plaintiff's messenger?

Q. 252. Who delivers it off the train?

A. Plaintiff's messenger.

Q. 253. Who received it when it was so delivered?

Objected to by defendant's counsel.

A. Your own agent.

Q. 254. The plaintiff's agent? A. The plaintiff's agent.

Q. 255. After that delivery, does the railroad company have anything further to do with it in connection with it?

A. No, sir.

At this point, by consent, the further taking of this deposition was adjourned until January 3, at 10 o'clock, A. M.

488 St. Louis, *January* 3, 10 *A. M.*

Parties met pursuant to adjournment. Owing to the inability of Col. Soper to be present, the further taking of his deposition was adjourned, by consent, until January 4, 1881.

St. Louis, *January* 4, 1881.

Parties met pursuant to adjournment, and the examination of A. W. Soper was resumed, as follows:

Q. 256. Mr. Glover: Have you now in court the papers asked for when you were on the stand, namely, the freight rates of the St. Louis, Iron Mountain & Southern Railway Company, since 1875 to the present time, and the bills of lading for the common freight upon said road during the same period, and bills of lading for express freight since the St. Louis, Iron Mountain & Southern Railway Company has been doing an express business of all kinds; that is, express contracts for transportation of all kinds; I mean including merchandise, money accounts, and collections, whatever bills of lading or receipts for goods or valuables to be transported you issued; I want all of them?

A. I have them all, excepting the railroad receipts, which I do not understand you asked for.

Q. 257. For the common freight?

A. Yes; but I can have them in a moment.

Q. 258. Will you please show me the freight rate of your railway company for common freight in force from 1875 to the present time? A. That is it, sir.

Q. 259. To what time does this come down?

A. To the present time; it is in force at the present time.

Q. 260. And was in force in January, 1875?

A. And was in force in January, 1875.

Paper marked Exhibit No. 9½.

Q. 261. Now, will you give me your charges for express freight for the same time, from 1875 down to the establishment of your express department—I believe there was none, but I am asking you—and then your express rates for express freight, from the commencement of the express department down to the present time?

A. The Adams and Southern Express Companies did the express
business on the Iron Mountain railroad till the estab-
489 lishment of our own department, and we had no express rates,
sir.

Q. 262. Except a general contract with them?

A. That is all, sir.

Q. 263. At what time did you commence the operation of the express department of your railroad?

A. About June 1st, 1880.

Q. 264. Now, will you show me the express rate which you established at that time?

A. Yes, I will produce it, but I haven't it here.

Q. 265. Now, will you show me your express rate?

A. I am going to send for it.

Q. 266. But you made one and modified it after the injunction? A. Yes, sir.

Q. 267. I want the first rate, and then I want the altered rate; I want all the express rates you ever established.

A. I will produce them.
Q. 268. You haven't either of them here now?
A. No, sir; but it won't take five minutes to produce them.
Q. 269. Now, your bills of lading will you show me?
A. These are the bills of lading which I understand are in force in the express department.

Papers shown.

Q. 270. Will you produce and show to the notary your bills of lading, or express receipt, for merchandise to be transported to some point on your line or upon your whole line?
A. I believe these cover all that are now in use, these that I now offer cover all the forms that are in use.
Q. 271. How many are there?
A. There seem to be five different forms.
Q. 272. Will you give the notary one, and tell him which class it belongs to?
A. That I cannot do; I am not familiar enough with it.

Witness produces and shows to the examiner five forms of bills of lading, used by the St. Louis, Iron Mountain & Southern Railroad Company, embracing all the forms of receipt of property for transportation used by the express department of said road now and since its establishment.
Marked Exhibits numbers 10, 11, 12, 13, 14, and attached to this deposition.

490 Q. 273. Are there any other form of receipt for property or money to be transported by the express department, of your railroad, than those five which you have shown?
A. Not to my knowledge.
Q. 274. Does that railroad company uniformly charge and collect the rates put down in the tariff rates for common freight, which you have just now exhibited to the examiner?

Objected to, as irrelevant and incompetent.

A. No, sir.
Q. 275. What is the departure, if any, from the regular tariff?
A. Well, it is dependent upon competing business and upon the amount of business, and is often a great deal less than the tariffs we have in use.
Q. 276. Dependent on those circumstances?
A. Yes, sir.
Q. 277. Can you give me an estimate of how much less?
A. No, sir, I cannot; if a man comes to make a contract, I might explain; to ship a lot of rock out from a certain station on the line of the road, the tariff of the commissioners has said that should be classed the same as iron ore, which has a large value, and the rock has none, and we take the rock probably one-half or one-quarter the rate rather than not to haul it, but it would not bear the same cost of transportation; the same with a great deal of inferior lumber;

the same in relation to stock being moved along the line of the road where it can be driven, that is also taken at less rates.

Q. 278. Can you say from the practice in respect to freight charges, common freight, that sometimes you undergo your published charges?

A. In freight charges.

Q. 279. Yes, sir? A. Yes, sir.

Q. 280. As much as some per cent., which you will see?

A. That would be difficult to name a per cent., it may be five or ten per cent.

Q. 281. Ever more than ten per cent.

A. Yes, sometimes more.

Q. 282. Can you now produce and show to the examiner to be filed with your examination, the railroad receipts used by your railroad company for common freight.

A. Yes, these are the ones.

491 Papers marked Exhibits Nos. 15, 16, 17.

Q. 288. Have you given me the form of bill of lading or receipt for transportation for through freight from St. Louis to Texarkana; do these embrace that and also the freight for a part of the way?

A. That embraces the way-freight tariff over the St. Louis, Iron Mountain & Southern Railway Company.

Q. 284. I am speaking of the contracts, or receipts, or bills of lading?

A. Yes; these cover that that I have given.

Q. 285. Do these forms embrace transactions where you ship beyond the line of your road? A. Yes, sir.

Q. 286. Now, in regard to your tariff of common freight, are there any blanks in the tariffs for certain points?

(Objected to as the paper will show itself what it was intended for.)

A. No, sir; I believe there are no blanks.

Q. 287. Does this tariff, the common freight tariff, which you have exhibited to the examiner, show your common rate from St. Louis to Cairo? A. It does, I believe.

Q. 288. Look on page 19 of Exhibit 9 1-2, and see if there is not a blank at the word Cairo?

(Objected to; the paper will show.)

A. That is not from St. Louis to Cairo, tariff on page 19; it is from Columbus to Cairo.

Q. 289. Show me from St. Louis to Cairo?

Objected to, as before.

A. Yes, there is a blank.

Q. 290. Why is that?

A. Because the Cairo Short Line running from here to Cairo is a competing point.

Q. 291. You do not know what your rate is till you know the state of the business?

A. Yes; if the river is open here, and boats are carrying stuff down at low prices, we have to compete with it, and it fluctuates five or ten times a year.

Q. 292. And that rate is not fixed? A. No, sir.

Q. 293. Have you a regular tariff rate; can you show me on Exhibit 9 what is the regular tariff rate from St. Louis to Little
492 Rock?

A. No, sir; that is not in there.

Q. 294. Why have you left that subject——

A. Because there is competition from the river here; the Anchor Line carries freight down and carries freight up the Arkansas river; it depends altogether on what I can get that I can charge.

A. 295. You do not publish a fixed rate because you change it from time to time?

A. From time to time.

Q. 296. From St. Louis to Columbus? A. The same thing.

Q. 297. Texarkana? A. That is in here.

Q. 298. What is the rate?

A. One dollar and half, first-class goods.

Q. 299. What is second class? A. $1.30.

Q. 300. How many classes are on that schedule of common freight rates?

A. Five; besides the different car-loads.

Q. 301. Besides the low classes? A. Besides the low classes; yes.

By consent of parties the further taking of these depositions was continued until to-morrow, January 5, 1881.

St. Louis, *January* 5, 1881.

Parties met pursuant to adjournment, and the direct-examination of A. W. Soper was resumed, as follows:

Q. 302. Mr. Glover—Plaintiff's counsel produces and shows to witness a bundle of papers containing eight sheets. The whole bundle marked Exhibit 18, and asks the witness to state what it is.

A. Those are the tariffs, as I understand, that have been in force since the establishment of the Iron Mountain Railroad Express department.

Q. 303. They are the tariffs of the express department alone, are they? A. Yes, sir.

Q. 304. Are you sure that is so?

A. Yes; I believe they are.

Q. 305. Doesn't this bundle contain some other matter than express rate charges of the St. Louis, Iron Mountain & Southern Railway Company?

A. Yes; some of them are the Memphis & Little Rock Railroad.

493 Q. 306. One of these sheets is dated June 1st, 1880; does that show the tariff that was in force at that date?

A. Yes, sir.

Q. 307. The express tariff? A. The express tariff.

Q. 308. Here is another sheet dated July 31, 1880, what does that show?

A. They each of them show the tariffs that were in effect at their respective dates.

Q. 309. Here is a paper signed "James Aikin, Superintendent," addressed to the agent at blank, dated St. Louis, Mo., November 11, 1880, was that issued at that date as a modification of the tariff express rates of your railroad?

A. That was issued as a direction to all agents on that date regarding tariffs.

Q. 310. Then here is another paper dated November 30, 1880, what is that?

A. I understand that is the tariff that was in effect at that date.

Q. 311. Now, these papers show the tariff rates existing at this time and since November 30, 1880.

A. Yes; since the commencement, as I understand, of the operation of the express department of the Iron Mountain railroad.

Q. 312. Has this tariff rate or these tariff rates while respectively in force been in force as the tariff rates of your railroad express department against all persons?

A. I understand they have.

Q. 313. But you do not know; do you mean you do not know?

A. I understand that they have; I have that authority from the superintendent or manager that they have been in force——

Q. 314. According to their terms? A. Yes, sir.

Q. 315. Have you no knowledge that rates have been given more favorable than these to any other persons than to the Southern Express Company?

A. I have not; on the contrary, their directions have been to not deviate from those rates in any respect whatsoever.

Q. 316. Yes, the rates themselves contain the directions, but what I wish to know from you is whether you know about any deviation in fact from those rates?

494 A. I do not, sir.

Q. 317. Plaintiff's counsel produces and shows to witness a paper purporting to be a copy of mail contract number 28,026 from Bismark to Texarkana, and also another paper entitled mail contract No. 28,027 from Cairo, Illinois, to Poplar Bluff; also paper purporting to be mail contract No. 28,002 from St. Louis, Missouri, to Columbus, Kentucky; said copies purporting to be contracts with the St. Louis, Iron Mountain & Southern Railroad Company, all purporting to be signed by Thomas Allen, and ask the witness what these papers are.

Papers marked Exhibit 19.

A. They are copies of the contracts which they purport to be for carrying the mail.

Q. 318. On file in the St. Louis, Iron Mountain & Southern Railway Company? A. Yes, sir.

Q. 319. Are they the contracts which are now in force, or are there others than these, which are now in force?

A. They are the contracts which are now in force.

Q. 320. Are there any other papers explanatory of the operation of these contracts?

A. I do not understand that there are, though Mr. Thoroughman says there are; my understanding is, we receive a regular remittance from the Government every month, in accordance with these contracts, and that there is no deviation from them, except when we have new weights, and get increased pay from time to time.

Q. 321. Are there any letters on file in the Iron Mountain railroad office or offices which show under what circumstances those contracts were entered into; are there any letters there consisting of communications between the Post-office Department of the Government of the United States and any office of the St. Louis, Iron Mountain & Southern Railway Company?

Objected to, as the proof would be incompetent and irrelevant in this case.

A. There are no letters in relation to that, except the request for additional remuneration, and requests of the Government for weights which have not been given for some time; and we believe we are carrying a large amount of mail that we are not getting paid for; we have written to them several times in relation to that.

495 Defendant's counsel objected to the answer as irrelevant.

Q. 322. Whoever have any such papers we ask for them; you will have them furnished to us, will you not?

Objected to.

A. I will furnish you anything that you want.

Q. 323. You stated that the value of the property of the St. Louis, Iron Mountain & Southern Railroad Company, in your judgment, when on the stand heretofore, was $35,000,000?

Defendant's counsel objected to the form of the question as assuming what the witness has stated heretofore, and as irrelevant.

A. Thirty-five to forty millions.

Q. 324. Did you make that estimate, and what did you base it on?

A. On its earnings.

Q. 325. Well, give us the data, Colonel, how you fix the value by the earnings; upon what per cent. of the value?

Obected to, as irrelevant.

A. Well, we figure what the earnings are and what the expenses are, and what interest it will pay on the valuation, and we calculate from that about what its value is.

Q. 326. What per cent. did you use in producing that result of thirty-five millions?

Objected to, as irrelevant.

A. It varies from time to time, according to what our extraordinary expenses are.

Q. 327. I do not ask about the expenses, but what per cent. upon the valuation do you give to reach the net income; suppose your net income was two millions and a half; what per cent. do you take to get that value, a certain per cent. that you are satisfied with respect to the incomes, and then you take an amount which yields that per cent., and then you fix that value, I judge?

A. Yes, that is the way we fix it.

Q. 328. Now, what per cent. upon the valuation did you take to show that road was worth that?

Q. 329. What per cent. of net income?

Q. 330. Yes, sir.

A. Well, on about two millions and a half, or two to three-quarters of the net income of the road.

Q. 331. What year? A. The last year.

496 Mr. WHITFIELD: What proportion do the earnings bear to the value of the road under this calculation you have made on which you estimated the value?

Objected to, as irrelevant.

A. I don't understand.

Q. 332. I assume that the income of a piece of property is sixty thousand dollars, and I am called to value it; I value it say, at a million dollars; if I was asked what proportion the income and valuation bore to each other, I should say at the rate of six per cent. in that specification; I suppose, from all that was said awhile ago, the value of the road was estimated from its earnings; now, you must assume that has to pay a certain amount of income to reach that valuation; I wish to know what present income you are assuming it does to pay to fix the value at thirty-five millions?

A. About five per cent.; I may say, we have fixed the interest on the bonded debt, for instance, and it amounts to so much money; we have that interest to pay, and I believe on that account the railroad certainly is worth that amount of money, that is, twenty-six millions.

Q. 333. I wish to show you five per cent. would make $1,750,000.

A. Yes; and we have $2,750,000; a great deal of our interest is 7 per cent.; that is fixed interest on our different classes of bonds; we have 7 per cent. on them.

Q. 334. Do you mean to say on a valution of thirty-five millions your road will produce 8 per cent. net?

A. It will produce on forty millions 7 per cent. net.

Q. 335. Do you mean you road is worth forty millions?

A. Yes, sir.

Q 336. Because it produces 7 per cent. net? A. Yes, sir.

Q. 337. Is seven per cent. a good or a bad turn out for a railroad operation?

Objected to, as irrelevant.

Q. 338. Is a road paying seven per cent. net on its valuation in unsuccessful or successful operation?

A. That depends on a great many circumstances as to what condition it is in; how much money is required to put it in first-class condition.

Q. 339. What is the condition of your road at the present time?

497 Objected to, as immaterial.

A. It is in ordinary condition, not a first-class railroad.

Q. 340. It is not? A. No, sir.

Q. 341. Then it is rather doing a poor business to make seven per cent. on forty millions?

Defendant's counsel objected to the question, as argumentative and irrelevant.

A. It is doing a fair business.

Q. 342. Has your road ever declared a dividend?

Objected to, as immaterial.

A. It declared one of three per cent., I believe, seven years ago.

Q. 343. What year was that?

Objected to, same as before.

A. I think in 1874 or 1875.

Q. 344. Was that dividend on the earnings or on the sale of stock and bonds?

Objected to, as before.

A. The road had earned the money.

Q. 245. That year? A. Yes, sir.

Q. 346. Didn't you take an extension that year of several millions, wasn't that the year?

A. This was prior to the year we took the extension; I cannot remember the year the dividend was declared.

Q. 347. Was it the St. Louis, Iron Mountain Railroad Company, or the old Iron Mountain? A. The old Iron Mountain.

Q. 348. The St. Louis, Iron Mountain & Southern Railway Company never declared a dividend? A. Never has.

Q. 349. Your valuation, then, that you put on the property of the road is the valuation for the benefit of the bondholders and not the stockholders; that is, it turned out about seven per cent. net to the creditors, is that so?

Objected to, as argumentative and irrelevant.

A. It at least paid this interest to the bondholders and has a surplus besides, which is being used in the construction and betterment of the railroad.

Q. 350. I will call your attention to a paper found in bundle 18, to one of the sheets of Exhibit 18, dated November 11, 1880, signed "James Aikin, Superintendent": "Hereafter you will charge on
kegs and boxes of coin as per tariff rates upon classification
498 sheet; if the marks are erased, you can determine the value
by the weight; on sacks or boxes and chests or packages,

charge three times merchandise rates;" what is the principle of that?

A. Of what—that letter?

Q. 351. Of charging three times merchandise rates in the communication I have read, what is the principle of that?

A. That is in order to get a fair and reasonable compensation for carrying articles in such packages; for instance, in our regular freight business we charge three or four times first-class rates for carrying looking-glasses and such bulky articles, show-cases and articles of that kind, that take up room, organs and pianos; all those things according to their value, and according to the bulk and amount of room they take.

Q. 352. I read from the same paper, "on safes and treasure boxes containing currency, coin, and valuables, charge six times merchandise rates; enforce this tariff from the date of its receipt;" what is the principle of that?

A. The same principle.

Q. 353. How did you get at the value by charging six times the rate; does that charge induce anybody to tell you the value?

A. I don't know that it does; if it did, that would be just as satisfactory, that is to prevent smuggling.

Q. 354. The object is not what I ask; I will put the question differently; here is one box of lead weighing 100 pounds, I will assume there is a box of gold coin weighing one hundred pounds, and assume that the two boxes are the same in size, exactly, and you don't know the contents of either; does it cost you any more to transport the gold box than the lead box?

Objected to, as incompetent and irrelevant.

A. We are entitled to more compensation for the gold; I can give an instance, perhaps.

Q. 355. No, just answer the question, as I wish to know whether it costs any more to transport—whether it will cost any more to transport a box of gold of precisely the size of a box of lead of the same weight and space; whether, it costs any more, in fact?

A. We calculate that it does from the difference in the value; the difference in the risk in case of loss.

Q. 356. How are you more responsible in the case of the loss; what is your idea?

499 A. The box of lead might be worth twenty-five dollars and the box of gold two millions.

Q. 357. What have you to do according to the course of business with the value of the box of goods that is presented to you? A. If we lose it we have to pay for it.

Q. 358. I think you gave us a bill of lading yesterday which said if the contents and value are not known you limit your liability to fifty dollars; now, if that is so, when I bring to you a box of gold and won't tell you what it is, and won't open it and you make me a contract that you shall not be liable beyond fifty dollars, as appears in the bill of lading yesterday, if I understand it, how are you interested in the loss beyond fifty dollars?

A. Well, we would prefer to know the value.

Q. 359. I know you would as a matter of curiosity, but how would it interest you when you make me agree before I deliver the box of gold that you are only responsible for fifty dollars?

A. We have a great many things in all those receipts which, I believe, are not held by law as a rule to protect railway companies; in all classes of railroad receipts that are given we claim we will not be responsible for certain articles on the road, for carrying them, on account of these contracts, and they have been questioned, and in some cases we have compromised, I believe, and paid them regardless of an agreement of that kind.

Q. 360. Then it is because you have a doubt about whether you will be responsible or not? A. Yes, sir.

Q. 361. Now suppose it should turn out when I bring you a box which you assume contains gold, and which may contain gold, and I say to your officer, "Mr. Aikin, I want a bill of lading for this," and Mr. Aikin says to me: "We will not take that box for any greater responsibility than fifty dollars, and you will agree with me if I receive it that the value is fifty dollars; that is all we are liable for;" you think if the bill of lading is accepted by me and the box delivered under it, you might have trouble; that is the idea? A. Yes, if it was lost.

Q. 362. Now, suppose the law to be that your are not responsible beyond fifty dollars, then how do you sustain the propriety of the charge for six times, suppose you are not liable beyond the fifty dollars? A. Well, we mean if we are.

Q. 363. Well, suppose you are not?

500 A. Well, then, supposing we are not, we are anxious to get the revenue from the extra amount of the valuation of the property, any way, whether we are or not.

Q. 364. Then you do not charge for the transportation according to the cost of transportation, do you, but you want to divide the profits?

A. We want what is reasonable, if we can get it.

Q. 365. But that is the project?

A. Yes, in all freight business that is the case.

Q. 366. Your rates, then, are not so much on the basis of actual cost and expenditure on the part of the railroad to carry that freight, as upon a desire to appropriate what you consider your share of the profits?

A. It is a necessity on account of all traffic business, as I explained yesterday, about carrying rock and cheap commodities of no value; we cannot get a revenue or profit by carrying them.

Q. 367. And you make out those express tariffs on that idea of securing a larger revenue?

A. Yes, a reasonable revenue, in proportion to their value.

Q. 368. Will you give me the through freight rate, if you can, upon your road, common freight train, from Texarkana to New York; can you do it there?

A. No, sir; these are express tariffs there; that rate is changing every day; it may be one thing to-day; I will tell you what I believe it is to-day; it is $2.50.

Q. 369. From Texarkana to New York? A. Yes, sir.

Q. 370. Per one hundred pounds, you mean, to New York?

A. Yes, sir.

Q. 371. Now, what part of that does the St. Louis, Iron Mountain & Southern Railway Company get?

Objected to, as incompetent and irrelevant.

A. I believe it is a dollar and a half.

Q. 372. Can you tell me who can give me the figures, what officer of your freight department can give me the precise figures of that to-day? A. Mr. Frink.

Q. 373. Now, will you give me the through rate to New York by express, through your express department, from Texarkana to New York?

Objected to, as incompetent.

A. I cannot give it.

501 Q. 374. Who can? A. Mr. Aikin.

Q. 375. How far is it from Texarkana to St. Louis?

A. 500 miles about; 490 miles.

Q. 376. Isn't it 488?

A. Well, yes; 489 and a half, I think, to be exact. We call it usually about 490 miles.

Q. 377. What is the distance from Texarkana to New York city. A. It is about 1,500 miles.

Q. 378. 1,100 *hundred* miles from here to New York, is it not?

A. By the shortest line, I believe; the freight goes by the longest line; they take it just as cheap as the short line.

Q. 379. You cannot give me the express rate from here to New York? A. I cannot.

Q. 380. What do you know of the St. Louis, Iron Mountain & Southern Railway Company in respect to capacity and facility of transportion on it?

A. Of its capacity for transportation on it?

Q. 481. And the facilities for transportation on it?

A. Well, sir, it has ordinary facilities for doing its business; at times a scarcity of rolling stock and locomotives, and then again a surplus, depending on the season of the year.

Q. 382. What is the character of the track from here to Texarkana in respect of grades, curves, and things that delay or facilitate transportation?

Objected to, as immaterial.

A. The condition of it, do you mean?

Q. 383. No, I mean the nature of the track, the nature of the ground over which it runs?

A. It has a good many grades and a great many curves, and a good deal of level ground.

Q. 384. Does it cross any mountains? A. Yes.

Q. 385. Where?

A. Between De Soto and Piedmont, we have grades there of 104 feet, which are considered very heavy grades.

Q. 386. 104 feet to the mile? A. 104 feet to the mile.

Q. 387. How many curves has it got on its track?

Objected to, as immaterial.

A. Well, sir, I cannot say.

Q. 388. Are there any places where the track is dangerous so that you have to go slowly and tediously?

502 Q. 389. There are places that the iron is badly worn, and we are obliged to run very slowly.

Q. 390. I do not speak of the repairs of the road, but of the nature of the ground? A. Yes, sir; places where the road is not ballasted, and in wet weather we have some high joints on the centers.

Q. 391. What is the highest grade on that road?

A. 104 feet to the mile.

Q. 392. How many grades are of that height? A. One.

Q. 393. What is the next highest grade?

Objected to, same as before.

A. One hundred feet.

Q. 394. What is the next highest? A. About 85.

Q. 395. What sort of a road is it, generally the 489 miles, in respect of easy or difficult grades, or difficult transportation from any cause?

Objected to, on the ground that the question has already been asked and answered, and the further ground, that it is irrelevant to any issue in the case.

A. It has difficult grades,

Q. 396. How does the St. Louis, Iron Mountain & Southern Railroad company compare with the Baltimore & Ohio railroad in respect to the height of grades and the number of curves, and the extent of curves?

Objected to, as before.

A. I cannot say, sir; I was never over the Baltimore & Ohio railroad, and know nothing of it.

Q. 397. How does it compare in those respects to the Pennsylvania Central?

Objected to, as before.

A. It has heavier grades, I think sir.

Q. 398. A more difficult road than the Pennsylvania Central? A. Yes, and less business along the line.

Q. 399. That is a different question; how does it compare in respect of its grades and curves to the St. Louis & San Francisco road?

Objected to, same as before.

A. I cannot say, sir.

503 Q. 400. Can you tell me the rate per cent. per ton per mile which the St. Louis, Iron Mountain & Southern railroad has received during the present year for transportation of common freight?

Objected to, as irrelevant.

A. It varies from 20 cents to a half a cent per ton per mile.
Q. 401. It has been higher than that heretofore, has it not?

Objected to, as leading.

A. No, sir; I do not think it has been any higher.
Q. 402. I don't know that you understand me.
A. You asked me if those rates had been higher.
Q. 403. Yes, whether you have received more for transportation per ton per mile than that?
A. It varies from 20 cents to a half cent.
Q. 404. I do not ask for the highest or the lowest rate that you received for any one mile; what is the average rate per ton per mile the present year?
A. I cannot say; we have not got the figures up yet.
Q. 405. Do you recollect what it was last year?

Objected to, as irrelevant.

A. I think they are a trifle under two cents; one and ninety-six one hundredths, I think.
Q. 406. I call your attention to the 6th annual report of the president and directors of the St. Louis, Iron Mountain & Southern Railway Company, already exhibited by him; to page six, it is Mr. Allen's statement; it is the first item on page six; there may be an error in that, Col. Soper; look at the top?
A. That was in 1879–80; yes, that is all right. That is the average revenue per ton per mile.
Q. 407. That is what I ask you; now I wish to show you your own statement, which is different and may be the result of a misprint. On page 14 you state it at 1.88, and Mr. Allen 1.81; I wish to ask which is correct?

Objected to, as incompetent and irrelvant.

Q. 408. You can tell by looking at the original in the office, which is correct?
A. Yes, I can get the figures and go over it; but I think 1.88 is correct.
Q. 409. Mr. Glover—Now, with the exception of such other things in regard to those mail contracts as may be pertinent we close. I may come and ask you for those things.
504 A. All right, anything you want; there is nothing, I am satisfied, except the correspondence asking for the re-weighing of such things.

Cross-examination by Col. Thoroughman:

Cr.-Q. 1. Mr. Soper, how long have you been actively engaged in the railroad business? A. Twenty-five years.
Cr.-Q. 2. Did you state, and if you did not, you may now, how long you have been connected with the Iron Mountain railroad?
A. Ten years.

Cr.-Q. 3. You also told the capacity in which I believe you are now engaged there—as superintendent? A. Yes, sir.

Cr.-Q. 4. You were shown, early in your examination-in-chief, a letter written by you to Mr. O'Brien, to which I shall now call your attention, and read you the following language, letter dated May 8, 1880, and is the one to which your attention was called by Mr. Glover; [reading] "Mr. Allen is determined in this matter; is personally interested with his friends." That is a letter to Mr. O'Brien, addressed to him as general superintendent of the Southern Express Company, what did you mean; what is meant by the expression, "Mr. Allen is personally interested in this matter"?

A. It means he is personally interested in the prosperity of the road; in the revenue of it and in the business.

Cr.-Q. 5. I want to get in your mind that fact, if true, in contradistinction to his being interested in the proposed Mississippi Valley Express Company; do you mean in that letter, to say to Mr. O'Brien, he was personally interested in the express company to be organized?

A. I meant to say he was personally interested in the railroad at that time; I did not know and have never known that Mr. Allen had any interest in the express company itself.

Cr.-Q. 6. Then what do I understand you to say you meant by his personal interest; that he was simply interested in the prosperity of the railway company?

A. In the revenue it derived from the business, and in the benefits to accure to the railroad company.

Cr.-Q. 7. You might, if you will in that connection, state the object or governing cause to the formation of the Company—the proposed formation of the Mississippi Valley Express Company.

505 Objected to, as incompetent and irrelevant.

A. Well, I would state that for several years the Southern and Adams Express Companies had been operating on the railroad, and on several occasions I had spoken to Mr. Rhodes and asked of him some more reasoneble compensation, some increased revenue for carrying the business, and stated to him our freight business and our passenger business had increased in a large proportion, and in every other interest excepting that of the express department, and he repeatedly told me they were paying what he considered a reasonable revenue, and with one apology and another, year in and year out, left us without any additional pay.

Cr.-Q. 8. Now state who Mr. Rhodes was with reference to the plaintiff, the Southern Express Company.

A. He was an officer of the Adams Express Company, I cannot tell you what officer, but he was the man that usually signed the contracts, and did sign the contract with the railroad company either as president or as manager or something.

Cr.-Q. 9. He was the man with whom you as superintendent of the road did business, the principal man? A. Yes, sir.

Cr.-Q. 10. Now, you were also asked to look at the letter written by Mr. Allen on May 11, addressed to Mr. O'Brien, general superintendent of the Southern Express Company, in which this language occurs: "In reply to your letter of the 7th, I have to say that under the contract we have made, it will be impracticable to have the Southern Express Company continue to do business on our line, &c.;" now if you know what contract is referred to in the text of this letter you may state that fact?

A. It was the contract that was made or contemplated with the new express company that we were intending to put on the road.

Cr.-Q. 11. Do you mean the contract that was made with the Mississippi Valley Express Company? A. I do, sir.

Cr.-Q. 12. That is the contract referred to in the letter of Mr. Allen of May 11? A. Yes, sir.

Cr.-Q. 13. Now, you may state what was done with reference to the carrying out of that contract, if anything?

A. Nothing was done about it; never was any company organized, and it was decided best to have the railroad company operate it and take its revenue rather than to have any stock company operate it.

506 Cr.-Q. 14. It was in contemplation, as I understand you, to form a stock company?

A. Yes, that was the intention; we had made application to several other companies to come on the road.

Cr.-Q. 15. You were asked the other day, and I wish to direct your attention to that now, who were interested in this road. You named some persons, and there was some interruption, as I remember, just at that time; I wish you to state now in full who were interested in that road, as far as you remember, and who were to be, if other people than those named by you were to be interested? A. In what road?

Cr.-Q. 16. No, in the express company?

A. That were connected with the road?

Cr.-Q. 17. No; those disconnected with the road.

A. Well, Mr. Kerens was interested, and it was arranged that Mr. Dodd and the cotton merchants here, and other people, should be interested in it as stockholders, to give the patronage to the concern, and I believe I named the other people, Mr. Lowry, Mr. Sheather, and Mr. Whelan.

Cr.-Q. 18. What was the arrangement as far as it went with reference to the interest of the citizens of this town, other than those interested in the railway company, in this express company?

A. It was understood and arranged we should distribute the stock among the merchants that would give it patronage or business.

Cr.-Q. 19. And by that bring a revenue to your railroad?

A. Yes, and to the express department of the railroad.

Cr.-Q. 20. Can you name other people other than Mr. Dodd?

A. Mr. Senter, Mr. Gilkerson, Mr. Sloss, Mr. Kirtland, Humphreys & Mitchell; it was intended to put it into the hands of all parties that were largely interested in shipping in the cotton business and in other business.

Cr.-Q. 21. That was the object of getting it up, if I understand, first to increase the revenue of the railroad; that you conceived the idea of getting up this express company?

A. Yes, sir.

Cr.-Q. 22. Now, was this attempt to organize this express company made before or after your application for increased pay to the Southern Express Company? A. After.

507 Cr.-Q. 23. There was one thing I wanted you to explain before I go further, if there is any explanation of it; I wish you to explain what you said with reference to the stock of Marquand in the railway company and in the express company that was to be formed.

A. I said I could not say whether the stock of the express company was in Mr. H. G. Marquand's name or in his son's name, or that it was to be. There was no stock ever issued. Whether it was to be issued in Mr. Marquand's name, or in his son's name; never was any stock issued at all, and no company ever organized, and nothing ever done with it.

Cr.-Q. 24. Who is Mr. Hayden?

A. Superintendent of the American Express Company here.

Cr.-Q. 25. Has the American Express Company ever done business over your road? A. It has not.

Cr.-Q. 26. If you ever applied to him, state when it was, to get him to do business on the Iron Mountain & Southern railroad.

Objected to, as incompetent and irrelevant.

A. I made several applications to Mr. Hayden.

Cr.-Q. 27. When was it, as near as you can state, you began those applications?

A. After talking with Mr. Rhodes and finding we could not get any increase of revenue, and understanding the Adams, or the same interests, were running the M., K. & T. in competing lines with us, I called two or three different occasions—two certainly—and talked to Mr. Hayden, of the American Express Company, and said to him, I believed if their people would take hold and pay us——

Objected to, as incompetent.

A. Additional revenue, that I believe they could make a great deal of money out of it and still pay us a good deal more money than the other company were, and we were anxious to have some concern independently of the Southern and Adams operating our railroad, inasmuch as they were operating the competing lines into Texas.

All the foregoing answers are objected to, as irrelevant and incompetent.

Cr.-Q. 28. What reason did he give, if any?

Objected to, as incompetent and irrelevant.

508 A. He answered me he would be very glad to do it, and believed that they could afford to pay more money, and that it was a desirable business, but under their contract with the Adams

and other express companies, they could not work the territory occupied by the Iron Mountain railroad.

Cr.-Q. 29. If he named the Southern Express Company among others, you may state that fact.

Objected to same as before.

A. The Adams and Southern Express Companies.

Cr.-Q. 30. This, then, was, as I understand, that under the arrangement between express companies, including the Southern, he could not go on your line of road?

A. Yes, sir.

Cr.-Q. 31. What did you understand by that, that there had been a partition of territory?

Objected to.

A. He told me the territory was divided up between the American, United States, and Adams Express Companies, and that neither of them could go on to the other parties' territories with their express business.

Cr.-Q. 32. If you have not stated when this was, you may state it now.

Same objection.

A. I cannot give the date.

Cr.-Q. 33. Was it before or after the attempted formation, or proposed formation, of the Mississippi Valley Express Company?

A. Oh, before any thought of having any express company of our own.

Cr.-Q. 34. If you made any offer to Mr. Parker, you may tell who Mr. Parker is, and what did you say to him?

Same objection.

A. Mr. Parker is superintendent of, or manager here of, the United States Express Company; I went to him and advised him that the Adams Express Company and Southern Express Company were working our road, and we were unable to get a fair compensation for it, and they were at the same time working the Missouri Pacific and M., K. & T. roads, carrying a large amount of Texas business over those lines, that I believed the Iron Mountain was entitled to, and we were not getting our share of the business,—

509 Answer objected to.

(Continuing:) And that I believed they could make an arrangement with our railway company to operate the road and give us a more reasonable revenue, and would make a great deal of money for themselves.

Cr.-Q. 35. What response, if any, did he make to that proposition?

A. Mr. Parker agreed with me that might be so, but that under their agreement with the Adams and American and Southern Express Companies, they were prohibited from working over the Iron Mountain and Southern railway in that territory.

Cr.-Q. 36. Well, sir, was this before or after the steps were taken to organize the Mississippi Valley Express Company?

A. Before, sir; a year or two before; three or four years before.

Cr.-Q. 37. Now explain what effect those agreements that were spoken of by those gentlemen to you had upon the business of the Iron Mountain railway, upon its revenues?

Same objection.

A. It prevented the Iron Mountain Railway Company from getting its just proportion of business; as I explained before, the Adams Express Company was running under contract with the M., K & T. road, which contract I had understood was to give them all the business that originated East and in St. Louis, and east of the Mississippi river for Texas and north of St. Louis, which deprived the Iron Mountain of getting a fair amount of carrying, which we believed we were entitled to; we had done, I believe, three-quarters of the business out of St. Louis, of freight and passenger business to Texas, and we had reason to believe we were not getting more than one-quarter of express-carrying business under this arrangement into Texas over the Iron Mountain railroad.

Same objection to the answer.

Cr.-Q. 38. What is the direct route to Cincinnati; what is the most direct route for goods to be carried by express into the most densely populated part of Texas and other cities of Texas?

A. Over the St. Louis, Iron Mountain & Southern railway; that is the short line.

Cr.-Q. 39. If I am a little dull this morning you will pardon
510 me; I wish you to explain now rather more fully the amount
of revenue that this system in the express companies deprived the St. Louis, Iron Mountain & Southern railroad of, in your judgment; what proportion of the revenue was diverted from you that would naturally come to you if not for those arrangements?

Same objection.

A. I believe it could be doubled if we had an independent express company operating our own road.

Cr.-Q. 40. Hence, you attempted to organize the Mississippi Valley Express Company, making the leading merchants and citizens of the city interested in it so as to increase its business, and get its business that legitimately belonged to it?

A. Yes, sir.

Cr.-Q. 41. You had a contract, which was referred to, at least in as far as mentioning the letter, with the Southern Express Company which was terminated last spring?

A. We had.

Cr.-Q. 42. What reasons had you in your mind for terminating the contract?

Objected to, as incompetent and irrelevant.

Cr.-Q. 43. Was it because you were not receiving the revenue you thought you were entitled to?

A. Yes, to get an increased revenue from that business.

Cr.-Q. 44. Now, it is a good place to get you to speak about the mail contracts of the United States Government; explain, if you please, whether the sum paid you by the Government is just and fair, or whether it is less, and if less, how the burden comes to be imposed upon the railroads under the law as you understand it?

Objected to, as incompetent.

A. The Government makes a rate for carrying the mail, and we have been obliged to carry it at whatever price they decide on; we have made repeated applications for increase of pay, but so far without securing it; we never have considered it reasonable compensation for the service rendered.

Cr.-Q. 45. Don't you, as superintendent of the Iron Mountain railroad, understand this to be the law, that railroads of the United States having received aid from the Government are obliged to carry troops of the Government in time of war for nothing, and in
511 preference to all other matters to be transported, and that you are obliged to carry the mails of the United States at all times under such compensation as the Department—Postal Department—sees fit to pay you?

A. That is the law on account of our receiving the land grants.

Cr.-Q. 46. And you conform to it? A. Yes, sir.

Cr.-Q. 47. If you have personal knowledge of the Southern California road absolutely refusing to carry the Government mails because it received no aid, and because the same price as paid you was being paid it, state it.

Objected to.

A. Yes, they declined to carry the mail and threw it out, and the Government finally increased their compensation to carry the mail; that was three or four years ago.

Cr.-Q. 48. So it is your impression that the law imposes the burden on you, that you carry the mail? A. Yes, sir.

Cr.-Q. 49. Now will you state what space you furnished in the car for the Government, or whether you furnish a car absolutely for the mail?

A. In some trains we furnish half a car, in others two-thirds of a car, and in others a full car.

Cr.-Q. 50. Is the arrangement of space in the car a matter of your selection, or is it selected by the Post Office Department?

A. By the Post Office Department, and arranged by them.

Cr.-Q. 51. You mean now by "arranged" that the department inside the car is fixed according to their directions?

A. Yes, sir.

Cr.-Q. 52. Is it fixed to exclude people if they choose?

A. Yes, sir.

Cr.-Q. 53. Partitioned with doors and locks? A. Yes, sir.

Cr.-Q. 54. Do you, or do any other railroads in the United States, as far as you know, have that kind of a car at all in common use for any other purpose? A. No, sir.

Cr.-Q. 55. So you believe that the Department under the law has a right to do that, and you submit to it? A. Yes, sir.

Cr.-Q. 56. And not on the ground of its being a fair compensation to the road for the service rendered? A. Not at all, sir.

512 Cr.-Q. 57. You were asked a very essential question the other day by Mr. Glover, if you opened and examined the mail, the contents of the mail bags. You don't attempt anything of the sort?

A. No, sir; the Government prohibits our own men from going into the cars at all, or having anything to do with the mail.

Cr.-Q. 58. Then I suppose the Government assumes absolute control on your car? A. Yes, sir.

Cr.-Q. 59. By reason of having granted aid to the construction of the road?

A. Yes, land grants.

Cr.-Q. 60. And don't allow your own officers in the car?

A. No, sir.

Cr.-Q. 61. You were also asked the other day if they did not keep a chair in there, for the agent to sit on; does the Government furnish the chair?

A. I believe the boys have a chair to sit down on.

Cr.-Q. 62. Do you furnish it? No, sir.

Cr.-Q. 63. The Government of the United States furnishes that part of the car that it appropriates, with whatever it chooses, does it?

A. They furnish it with chairs, I think; the other part we furnish.

Mr. **Whitfield**: Do you say the Government furnishes it?

A. I say the Government or employees.

Cr.-Q. 64. Mr. **Thoroughman**: The railway company don't furnish it? A. No, sir.

Cr.-Q. 65. The question of contracts between the Government of the United States and the railroad, in reference to these mail matters, are considered a matter of negotiation between the Government and railroad department; or is it an order issued by the Department that it will pay so much money for such a purpose?

A. It is an order issued by the Government, that it will pay so much money for this service.

Cr.-Q. 66. You believing the law to be that they have a right to do it, you submit as general superintendent of the road? A. Yes, sir.

513 Cr.-Q. 67. Mr. Soper, you have been asked a good many questions about the floating debt of the road and its successful operation; I don't care about its operation, whether it is worth much or little, or about its curves and grades, or whether it is as good or better than the Baltimore & Ohio, or any other road, but I would like to ask you what is the capacity of profit between the Eastern and Western roads; what are the profits, if you have any information on that subject, between the roads doing business in the East or West; what I mean is, can a road in the West carry freight or passengers as cheap or cheaper than an eastern road?

Objected to.

A. Can the St. Louis, Iron Mountain & Southern?

Cr.-Q. 68. Yes, the defendant?

A. No, sir; it cannot carry it as cheap as the Eastern roads.

Cr.-Q. 89. Why can't it?

A. Because the country is sparsely settled; few people in it; a passenger train for instance, to run 500 miles, costs as much to run it with coaches in the train as it costs the New York Central or Pennsylvania road and their coaches will go filled with passengers, taking them up at every station, within fifteen or twenty miles where the country is filled with large cities, and off here the entire length of the whole road will probably not average 15 to 20 local passengers the whole length of it; and the same argument exists in regard to its freight business; its stations are small; few people there and very little traffic, and where they would stop a car and have it entirely loaded with freight, or a dozen of them, the whole business of one of our stations would not load a quarter of a car; we have just as much expense to put in one car to a station as they would to put in ten, and then we have to carry it to another small station to get another jag, and so on, and the cost to the railroad is as much in there as in the east, and the business is not there to give the railroad to make a reasonable profit at any such price as the Eastern lines get.

Cr.-Q. 70. But if you had the same population to carry, and the same freight, you could do it as cheaply on any given number of miles of road, couldn't you?

Objected to, as irrelevant.

A. Yes, sir.

Cr.-Q. 71. You are conforming to this section of the statute that has 31 subdivisions, read to you by Mr. Glover, under the direction as I understand you, as far as you understand it, given
514 you by the railroad commissioners, they furnishing you
blanks, &c.? A. Yes, we are conforming to making the reports, you mean.

Cr.-Q. 72. Yes, sir.

A. Well, we haven't made a report except twice, as I found out——

Cr.-Q. 73. But in those instances where you have reported you have done it in the form they have asked you?

A. Yes, sir; as near as possible.

Cr.-Q. 74. I do not ask whether it is done all the time or not, I do not care anything about it. I will ask you whether or not there has been an increase from your connection with the Iron Mountain & Southern Railroad down to the present, whether it has increased or diminished in its revenue?

A. It has increased from ten to fifteen or twenty per cent. as people have moved in, and new industries have been established along its line.

Cr.-Q. 75. You were asked this morning, and I think your answer was satisfrctory to me, I do not care to pursue it further if it is, whether there are deviations in your published freight rates; I understood you to say there are not, except in cases named yesterday; did I understand you correctly?

A. The deviations in our published freight rates of what?

Cr.-Q. 76. Your common freight?

A. We make special contracts.

Cr.-Q. 77. Now you stated in the case of stone and iron, there were deviations in your charges, I understand you?

A. Yes, sir.

Cr.-Q. 78. But now do you know of an instance—of a single case—where there have been any deviations in the express department?

A. I do not, except in the carrying of some empty kegs, which were being carried for the Southern Express Company free and for the Iron Mountain department free.

Cr.-Q. 79. Well, those are the matters that were before Judge Treat last fall? Yes, sir.

Cr.-Q. 80. Except those, you know of none? A. No, sir.

Cr.-Q. 81. I understand you that this express business is more particularly in charge of Mr. Aikin than yourself?

A. Yes, sir.

515 Cr.-Q. 82. Of course, you are superintendent?

A. He is superintendent of the express department.

Q. 83. He is subordinate to you; but the details of that he attends to and superintends the department? A. Yes, sir.

Cr.-Q. 84. I will ask you to look at paper dated November 11, 1880, among the papers marked Exhibit 18, and read it, and explain what it has reference to, and particularly this copy of circular that was sent to all the agents of the express department.

A. This order is sent to them the same as in our freight business, to prevent the carrying of valuable articles and articles requiring extra space, and to secure revenue for carrying same, as in our freight business, we make the rate on vegetables, we will say from here to Dallas, $140 a car; we find in a great many cases those people ordering this car load of vegetables will send over to Crow, Hargadine & Co. and get a few pieces of silk and dry goods and pack them in a barrel, and certain other instances, where they pack them in boxes and load them in those cars to go at the rate charged for a car load of vegetables. We have those cars inspected and take out such stuff, and inspect it, and have the people pay on it according to the regular tariff on silks and dry goods, or whatever else there may be in this car as a car load of vegetables.

All this question and answer is objected to, as incompetent and irrelevant.

WITNESS (continuing). The same thing relating to tariffs on grain; we make a tariff on grain or pig-iron, and do not calculate a man can load it up with machinery and other valuables that are not what they are represented to be in the shipment.

Cr.-Q. 85. Now, you were asked by Mr. Glover this morning whether you would make the same charge under the circumstances presented to you for one hundred pounds of gold or one hundred pounds of lead; I wish to ask you if your answer in reference to the carriage of stone and iron is not applicable and exactly applicable to the case of the lead and gold presented to you by Mr. Glover—whether the same rules would not operate upon your mind?

A. Yes, sir; in making all kinds of tariff we have to base them
very largely on the profits of the concern. The same in the
516 lumber business. I would state we make a lumber tariff that
will bring the lumber from Desarc and Piedmont, and any other station, to St. Louis, and the price of lumber goes down in the St. Louis market through other competing lines bringing it in or a depreciation in the business, so that the mill man comes and states it is impossible for him to continue his milling business and pay the rates we have been charging; we calculate it is a great deal better for us to carry that lumber for him at a mere minimum profit than to destroy his business or to have him leave the road, inasmuch as if he stays there we carry a great deal of south bound business or supplies to him, and we conclude under such circumstances we can better afford to carry his product at no profit than to have him leave.

Objected to, as incompetent and irrelevant.

Witness (continuing). But you see in that connection we cannot pay interest and taxes and do the business of a railroad company on that basis.

Cr.-Q. 86. Then the railway company, if I understand you, operates its business somewhat on the principal- of the balance of mankind, charging in proportion to the work it does, as well as the value of the thing about which it works——

Objected to.

A. Yes; we have had such instances in relations to all products along the line of the road; in lead, at Mine La Motte and St. Joe, those people were in position that we charged them fifty cents a hundred for carrying it; they were making a profit of several hundred dollars a car; we get a much better rate than we did; when the price of lead fell and they concluded they couldn't ship and manufacture it at a reasonable profit, and we were obliged to reduce the rates, and when they advanced we advanced the rates, when the profits increased.

Objected to, as incompetent and irrelevant.

Re-examination by Mr. Glover:

Q. 1. Col. Soper, I understand, then, your freight rates are fixed not so much at what it costs you to transport freight as upon the value of the article transported; you claim a part of the value thereof; is that it?

A. No, sir; I will say that has a good deal to do with our largest
class of business, the profits made in the business. If a man
517 opens a mine of hematite ore, and can get only four dollars a ton
for his ore here in St. Louis, and we have to haul it one hundred miles, and we know it costs him about one dollar to get it out, we calculate that we cannot get as much profit for carrying that man's

ore as his neighbor's, who can get ten dollars a ton for it in St. Louis with the same expense.

Q. 2. Your charges are based on the value of the article transported as well as the weight of it?

A. Yes, in certain instances.

Q. 3. I wish to know if I understand some of your answers to Col. Thoroughman, that before you determined to dissolve your connection with the Southern Express Company, which you had a right to do on giving notice, you had discovered the St. Louis, Iron Mountain & Southern Railway Company was not realizing as much profit as it should; that was the inducement that caused you to make various efforts which you have recounted, seeing A, B, and C, to interest them in the express business; that at least with a view to increase the business of the road and promote its successful operation, you went into the arrangement of the Mississippi Valley Express Company, and you made that contract with that view, and that it was so arranged as to be of great advantage in increasing the business of the road as well as to give a profit to the Mississippi Valley Express Company; is that so?

A. It was arranged to give a greater profit to the road; the contract required that the Mississippi Valley Express Company should guarantee at least a greater percentage of revenue to the Iron Mountain & Southern Railroad Company than had been paid by the Adams and Southern Express Companies.

Q. 4. That contract with the Mississippi Valley Express Company was a fair contract to all parties, and intended to increase the business of the road; is that so?

Objected to, as irrelevant.

A. It was a question that was not fully settled, Mr. Glover; we had not the means at our hand to know what would be a fair contract with the Iron Mountain & Southern Railroad Company; it had not been running—we had not run an express department, and did not know what its revenue was, and believed this concern could afford to pay it more than the old concern paid, and it was understood it should be just so as to pay the railway company a fair proportion of what it received.

518 Q. 5. You took a great deal of pains in framing the contract with the Mississippi Valley Express Company; you considered it very maturely, didn't you? A. Personally?

Q. 6. The St. Louis, Iron Mountain & Southern Railway Company.

A. Well, they did not consider it very maturely; it was a matter gotten up in something of a hurry, after they decided to do it.

Q. 7. When did you give up the idea of making a contract to redound greatly to the advantage of the railway company and to the express company; did that idea enter in the contract of the Mississippi Valley Express Company—that the arrangement then made would redound to the great benefit of the railroad company, and also to the express company?

A. It was certain it would redound to the great benefit of the railway company.

Q. 8. It was a fair contract to all parties, I understand?

A. I will not say it was; I will say it was hastily gotten up; we were not in a position, the railroad company, to say what would be a fair contract at that time.

Q. 9. Wasn't it signed by the parties?

A. Yes, it was signed, but it was signed among friends who we knew were more or less interested in the railway company, and any time our people wanted to do it, if we thought it was an unreasonable contract, would be able to modify it.

Q. 10. I am talking about the contract as it is; do you say the contract was unjust to the railway company?

A. I say we believe it to be a very just contract to the railway company; it guaranteed more revenue than the other concern had ever paid.

Q. 11. Mr. WHITFIELD: How long has it been since you have had a conversation with Mr. Rhodes, in which you complained of the rates paid your company for express transportation?

A. I have had a conversation with Mr. Rhodes, I think I can say at least twice a year for the last five or six years, till this last year; every year two or three times at least.

Q. 12. Until the last year?

A. Yes; I do not think I have seen Mr. Rhodes this last year, 1880; I don't remember to have seen him.

Q. 13. But you did have such conversations with him within a year next preceding the termination of this contract, did you?

519 A. I think so; yes. I wish to explain that in this relation, it has not only confined itself to Mr. Rhodes, but in the common interest, the Adams and Southern Express Companies which have been running over the railroad; I speak of Mr. Rhodes, inasmuch as I talked with him more than anybody else; I think I have talked with him and Mr. Fisher in relation to the same matter.

Q. 14. Did Mr. Fisher come up here and offer to make a new contract with you? A. Yes, sir.

Q. 15. Before this was terminated a short time? A. Yes.

Q. 16. Came several times, did he not? A. Yes, sir.

A. He was in there at least two or three times, yes.

Q. 17. Didn't he try to see Mr. Allen once or twice?

A. Yes, sir.

Q. 18. Didn't you tell him Mr. Allen was sick and could not attend to business?

A. I don't know that I did; I know very well that Mr. Allen did not want to see him, and we did not want to make a further contract with the Adams or Southern Express Company.

Q. 19. Didn't you tell him Mr. Allen was too sick to attend to business? A. If I did I told him the truth.

Q. 20. I do not ask whether you told him the truth?

A. Well, I may have said that to him; I remember his being in the office one day, and I remember Mr. Allen saying to me, he did not want to see Fisher in relation to the matter or talk with him about it, that he had settled his mind with you people, he wanted an arrangement with some other people than you, and there was no use talking about it.

Q. 21. Then, what did Mr. Allen mean when he spoke of Mr. Fisher and the Southern Express Company, if they had applied earlier for the contract they might have made the arrangement, but now it was too late?

Objected to.

A. I don't know what he did mean, excepting he meant just the same as I have in all my connection with the gentleman; he concluded there was no necessity for any unfriendly personal feelings; we simply wanted to make a change in the business relations, and have the profits of the business go in some other person's hands.

520 Q. 22. You have just said that Mr. Allen had told you repeatedly he did not want to make any contract or renew any arrangements with the Southern Express Company?

A. Yes; he told me on the occasion of Mr. Fisher being there; he told me the day before—I told him Mr. Fisher was there and wanted to see him, and he said it was no use talking about it, he did not want to make any arrangements—I think the contract at that time had been signed with the other concern; I am not positive about that. I will say, though, in that connection, it has been decided for a long time we could not make a contract that we believe to be reasonable and fair, "to give the Iron Mountain railroad the business it was entitled to," and at the same time have your people operating a competing line on the M., K. & T. road, and a line south from New York, or from eastern points into that same territory.

Q. 23. What is the distance from Cincinnati to Texas via St. Louis?

Objected to, as immaterial.

A. I cannot give you the exact distance.

Q. 24. But you say it is shorter than it is from Cincinnati via Memphis to Texas? A. No, I did not say.

Q. 25. I took your words down, and this is your language: "The Iron Mountain is the shortest route from Cincinnati to the densely settled parts of Texas."

A. I believe I was speaking then of the line south; I did not think of Memphis as being a line there; it may be as short in that way as the other way, but it would be against the interest of the St. Louis, Iron Mountain & Southern Railroad Company to do the Cincinnati business via Memphis, from the fact they would get only 145 miles of hauling it, whereas by St. Louis we get 490; you understand that?

Q. 26. Yes, I understand that, that is the reason I thought you were mistaken. A. Well, I may be mistaken.

Q. 27. It is about 100 miles further this way, isn't it?

A. No; I don't know what the distance is; it may be shorter and it may be longer.

Q. 28. Which do you say is the shortest?

A. I cannot say, without looking it up, which is the shortest; it may be the other line is the shortest, that is the line via Memphis is the shortest.

521 Q. 29. But you say by forcing the freight this way——

A. By bringing the freight this way we get a long haul on it, three times the haul we do if it goes by Memphis.

Q. 30. For that reason you say it is to the interest of the St. Louis, Iron Mountain & Southern Railroad Company to require the freight to come this way.

A. Yes, sir.

Q. 31. How is the general railroad business now compared with what it was this season a year ago?

Objected to, as irrelevant.

A. It is less with us, sir; the Iron Mountain.

Q. 32. Doing less business now?

A. Less business than we were a year ago; the cotton crop has been bad, and we haven't hauled the stock this year, and several things we are short of; we did not earn as much money in December as last year.

Q. 33. How does it compare with two years ago?

Same objection.

A. Well, I think it is not so good as two years ago.

Q. 34. What is the relative amount of freight carried by the express now over your road compared with the express matter carried twelve months ago?

A. I don't think there is as much of it, sir.

Q. 35. Don't think as much carried now as twelve months ago?

A. No; I don't think your people—that is my understanding—have given us as much business as we got when you carried it yourself; you ask about the amount of stuff carried; I understand your express company don't give us any business you can help giving us, therefore we are not carrying as much as we were then.

Recross-examination by Col. **Thoroughman**:

Cr.-Q. 1. I understand you in reference to the contract made between the Mississippi Valley Express Company and the Iron Mountain Railway Company, it was left open notwithstanding the execution of that contract to be afterwards adjusted when the fair basis should be ascertained by a testing of the business.

Objected to, as incompetent and irrelevant.

A. Yes; It was understood we would make that contract with the understanding it might be modified at any time.

522 Objected to.

Mr. **Whitfield**: Who did you have that agreement with?

A. I talked with Mr. Kerens about that matter myself and we talked with Mr. Allen about that matter, that the contract would be made.

Signature waived.

Frederick Fawcett, sworn and examined as a witness, deposed and said:

Direct examination by Mr. Glover:

Q. 1. Mr. Fawcett, where do you reside?

A. 1520 Wright street, St. Louis.

Q. 2. How long have you resided in the city of St. Louis?

A. I have lived here for the past 23 years or a little more; I was raised here.

Q. 3. What business are you engaged in at this time?

A. I am in the city express business, the transfer business.

Q. 4. What is that business; how is it conducted; what is the manner and nature of it?

A. We have wagons we use for all kinds of hauling work; we did run two branches, Accommodation Transfer and City Express; call for goods and deliver to all parts of the city, and collect on them, and do an express business.

Q. 5. Go to the people's houses?

A. Yes, sir.

Q. 6. To people's stores? A. Yes, sir.

Q. 7. To railroad depots? A. Yes, sir.

Q. 8. Deliver to people at their houses? A. Yes, sir.

Q. 9. Receive from the railroads and steamboats?

A. When we have orders on them.

Q. 10. That is your business, if you have business of that sort—if you get business of that sort you do it?

A. Yes, sir.

Q. 11. Where is your office? A. 310 Locust street.

Q. 12. How long did you say you had been in this city express business?

A. In this business last time? I started in the first of last month, the first of December.

Q. 13. I mean this kind of business?

A. I have been in this business off and on, I forget, ten or eleven years.

Q. 14. In St. Louis?

A. Yes, sir.

523 Q. 15. Now, tell the manner of your business, how it is; if I come and say, "Mr. Fawcett, I want you to send to my house, which is 2904 Gamble street," probably two miles from here, will you run out there? A. Yes, sir.

Q. 16. You go out there and bring the package for me, and if I have one at the house you take that and I give you a check, and you go to the railroad and deliver it where I tell you?

A. Yes, sir.

Q. 17. How are you paid, on delivering or on request to do the work?

Objected to, as incompetent.

A. Well, I am paid either before or afterwards; if I know the parties to be good I trust them for it, and if I don't know them to be good I expect to be paid in advance.

Q. 18. Suppose I wanted a package weighing 100 pounds taken from my house to the Union depot, and I come to your office and give you an order and ask you what the price is, and you tell me and I pay you, then you go out to my house and if you get the package you leave a receipt, do you?

Defendant's counsel objected to the form of the question as leading, and as information of the counsel and not of the witness.

A. Well, yes, generally.

Q. 19. I will get you to give an account to the examiner of how you transact this business; tell when people come in what you do and what they do as to two or three instances the way you do business, when you demand pay and when you do not, and the reason. A. If a man comes in with a small package and wants it delivered out in the city, I ask who it is from and where it is going; we are governed altogether by the size of the package; if he says he will pay for it out there, I collect it there; if he asks how much it is I tell him, and he pays for it there if he chooses; if not we collect at the other end, unless I know that he will pay for it; with business men we are not particular.

Q. 20. What is your price for sending from 310 Locust St. to the corner of 12th and Washington Ave. to get a package and deliver it to the Union depot—the usual charge?

A. I would not charge any more for that than the general city delivery, unless it was in a hurry and a special trip; we would charge a half dollar for that; but if it were a regular delivery I would not charge more than half that amount.

524 Q. 21. Suppose you went out from your office, 310 Locust St., to Washington Ave. and 20th for a package?

A. We would not charge any more.

Q. 22. What would be the charge?

A. It would depend altogether on the size of the package and weight; we have a regular tariff.

Q. 23. Say five pounds? A. It would be five cents, unless we made a special trip.

Q. 24. Ten pounds? A. Ten cents.

Q. 25. Fifty pounds? A. Thirty-five cents.

Q. 26. One hundred pounds? A. Fifty cents, unless it is in such a shape it would not take up much room; if a small package weighed one hundred pounds I would not charge more than thirty-five cents for it; if a bulky package, I would charge half a dollar.

Q. 27. Suppose two hundred pounds? A. I would charge half a dollar for that, unless it was too large; I might charge seventy-five cents.

Q. 28. Tell us what your charges would be from 310 Locust St., your office, to Grand Ave.

A. Well, if we made a special trip out there we could not do it for less than half a dollar, but a small package we generally send out on the regular city delivery; have two deliveries a day as a general thing; I send them altogether, and make it all at one trip; I can take it much cheaper by sending it on the city delivery than by special trip.

Q. 29. Suppose you sent to Grand Ave. for a two hundred pound package?

A. We charge seventy-five cents for that; if we cannot get seventy-five cents we might take fifty.

Q. 30. How far do you run north?

A. We run as far as 4,500 north, or further than that.

Q. 31. To number 4,500 north?

A. Yes; our regular delivery goes to 3,800 north, but we will go as far as 4,500 north if we are paid for it.

Q. 32. How far south? A. Our regular limit goes to 3,600 south.

Q. 33. Do you go to Carondelet? A. No, sir.

Q. 34. Didn't you at one time go to Carondelet?

A. No, sir.

525 Q. 35. Who else except yourself, if any one, ever had a city delivery here?

A. I do not know; there has been a Mr. Warren, sometime ago had a city delivery; I guess, about the first one in the business.

Q. 36. Did you ever know a gentleman named Foster?

A. No, sir; I knew of him; I was not acquainted with him.

Q. 27. What business was he in? A. I don't know; I think he was more in the trunk line; his was a twenty-five cent delivery.

Q. 38. He had an office on what street?

A. On Sixth street.

Q. 39. That concern has ceased to exist? A. Yes, sir.

Q. 40. What has become of the Warren express?

A. I don't know; Mr. Warren went out of town.

Q. 41. Is it running now? A. No, sir.

Q. 42. Your own express, the name of it is what?

A. The Accommodation Transfer and City Express.

Q. 43. It is the only one in the city?

A. No; I guess it is not.

Q. 44. In the city? A. No, not by a great majority.

Q. 45. What do you charge a man for a ten pound package from 4500 Broadway, going from your office, 310 Locust street, to 4500, and going back to the Union depot, and delivering it there? A. Taken from our office to 4500 Broadway?

Q. 46. Going from your office to 4500 Broadway—suppose a man at 4500 Broadway sends you a message to come and take a ten-pound package from there down to the Union depot, and you go and perform that service, what would you charge him? A. I would charge him 25 cents.

Q. 47. Suppose it is a fifty-pound package?

A. We may charge him half a dollar.

Q. 48. Suppose it is a 100 pound package?

A. We would try to get 75 cents if we could, and if we could not, take it for half a dollar.

Q. 49. Suppose it was a 200 pound package?

A. Try to get a dollar in that case; if not, take 75 cents.

Q. 50. What would be a reasonable compensation to you?

A. Those figures would be as reasonable as I could afford to carry it.

526 Q. 51. Would be about fair? A. Yes, sir.

Q. 52. Suppose you sent from your office, 310 Locust street, to 3000 Broadway, for a ten-pound package, which you delivered to the Union depot, what would you charge?

A. I would take that in the regular city delivery and charge him about fifteen cents.

Q. 53. Suppose in that neighborhood you would get twenty packages of the same size, what would you charge each man for his package?

A. I would charge, if all going to the same place, fifteen cents each.

Q. 54. Each? A. Yes; but if I could not get that I would take ten.

Q. 55. Suppose you sent from your office to 1000 Broadway for a ten-pound package, which you would get and deliver to the Union depot, what would you charge?

A. Charge the same as the last.

Q. 56. If you got in that neighborhood ten other packages?

A. Charge them just the same.

Q. 57. From different individuals it would be the same I understand? A. Yes, sir.

Q. 58. Now, those charges, which you have stated, would they be the same, or more, or less, if you went that far south?

A. No, sir; would be about the same.

Q. 59. And if you went beyond Grand Avenue to various places at the same distance which we have named above, would there be any difference in the charges?

A. No, sir; the same thing.

Q. 60. Now, how are those charges, which you referred to for such service as you have named accepted by the public?

A. Well, they seem to like it; seem pleased with it.

Q. 61. Does your business grow or decrease?

Objected to, as irrelevant.

A. It has been growing.

Q. 62. Have you a telephone in your office?

Objected to, as irrelevant and improper.

A. Yes, sir.

Q. 63. What use, if any, is made of the telephone in your business? A. Well, it is a big thing in our business.

Q. 64. How a big thing, go on and explain?

527 A. People round town get taken short for a wagon, and they want something done in a hurry, they telephone us to send a wagon down, and we do it.

Q. 65. Now, what do you pay, if anything, for that telephone?

Objected to, as irrelevant.

A. Same as anybody else does, I guess.

Q. 66. I do not know how much that is; how much is that?

A. One hundred dollars a year.

Q. 67. How many employees have you got in your work?

Objected to, as incompetent.

A. I have nine besides myself.

Q. 68. There are ten laborers in your business? A. Yes, sir.

Q. 69. How many horses, and teams, and carriages?

A. We have got only twelve now; lost a horse last Sunday; we had thirteen; 12 horses; four 2-horse wagons, four single wagons, and a horse and buggy.

Q. 70. What does your office rent cost you?

Objected to, as irrelevant.

A. Our office costs us nine dollars a month; that is up stairs office.

Q. 71. What does it cost you a month to keep, feed, and to take care of your horses? A. I board them.

Q. 72. How much a month? A. $12.50 a month per head.

Q. 73. With the wagons? A. Yes, sir.

Q. 74. The wagon is housed at the same stable?

A. Yes, sir.

Q. 75. He charges you twelve dollars and a half for taking care of your horses, wagons, and harness? A. Yes, sir.

Q. 76. Please state to the examiner whether the charges that you make for the services which you have said you render are reasonable or not?

Objected to, as irrelevant.

A. Well, people seem to think they are reasonable, and I think so too—very reasonable.

Q. 77. What do you pay for your teamsters, messengers, per month each man?

Objected to, as incompetent.

A. We pay by the day now; pay double drivers a dollar and a half a day; single men a dollar and thirty-five cents; some single men get a dollar and a half.

528 Q. 78. By double men you mean a driver of two horses? A. Yes, sir.

Q. 79. What was the average cost of your horses when you purchased them?

Objected to, as irrelevant.

A. Some of them cost a good deal of money; some didn't cost quite so much; some there cost in the neighborhood of $200 apiece; some that did not cost more than fifty dollars apiece.

Cross-examination by Mr. THOROUGHMAN:

Cr.-Q. 1. You are not running an express outside of the city at all? A. No, sir.

It is agreed that the foregoing affidavit of J. J. Grimsley shall be read at the trial of the above cause with the same force and effect as if taken in regular form of deposition. January 4, 1881.

THOROUGHMAN & PIKE, *For Def't.*
GLOVER & SHEPLY,
WHITFIELD AND BRECKINRIDGE,
For Pl'ff.

531 ST. LOUIS, *January* 6, 1881.

Parties met pursuant to adjournment, and the further taking of depositions was resumed as follows:

NATHAN STEVENS, of lawful age, being produced, sworn, and examined as a witness on the part of the plaintiff, testified as follows:

Direct examination by Mr. WHITFIELD:

Q. 1. What is your name, age, residence, and occupation?

A. Nathan Stevens; reside in St. Louis; and am a railroad agent.

Q. 2. How long have you been connected with railroads, Mr. Stevens?

A. Since 1847; that is 34 years; between 33 and 34 years.

Q. 3. You have been connected with the practical operation of railroads?

A. Always; I have made it my study in all its departments.

Q. 4. What is the additional cost to a railroad of transporting ordinary express freights, such as are usually carried by express upon their passenger trains, more than the same freights would cost carried upon freight trains?

A. That is a hard question to answer directly, and it would have to be largely a matter of opinion and be dependent on a good many circumstances. If you run freight cars on passenger trains at the same speed you run the passenger trains, it would cost a good deal more; but if you merely put in a few hundred pounds or a few tons into a passenger car where you had the spare room, there would not be so much difference. That is the mere matter of hauling I speak of now; I do not speak of the preliminaries of billing and collecting, and all that.

Q. 5. Can you approximate or state the limits in which you think the increased cost would be embraced?

A. Well, that would be only a matter of opinion again; I do not think the thing has ever been tested; therefore no statistics kept by which that thing could be arrived at, and it is only a matter of opinion, and I would rather your question would be more definite as to the manner in which the freight should be carried, whether loaded in a car by itself or simply carried as a lot of express freight; I 532 could then give an opinion, I think, that would be more correct. No railroad, to my knowledge, has ever kept an exact account of the cost of hauling express freight.

Q. 6. Assuming that the railroad is one constructed so as to possess the average conditions of completeness of means and facilities, and is in what is called an average condition of repair, with the average amount of grades, and so forth, and run passenger trains in which there is a car, one-third of which has no other use than that of transporting express freights—or which runs one entire car for express matter; can you approximate the additional cost of the transportation of the express freights carried on such a train over what the cost of the same would be carried on freight trains upon the same road?

A. I can only give an opinion, based upon considerable experience; of course, if you put the express freight into a car that is used for a baggage car that has to be run any way on the train, the additional cost is not so much as where you have to run a special car for that freight, because you have the additional weight of the train to haul, and if you run a special car it would cost more than it would in the other case; I should say, running a special car it would cost on a passenger train, the mere hauling a separate car that way, twenty-five per cent. more than it would on a common freight train, that is, the hauling alone; I did not take into consideration, in this case, any of the billing.

Q. 7. You have answered as to an entire car?

A. Yes; that is an entire car.

Q. 8. Now assume the express matter is carried in say one-third of a baggage car which goes necessarily as a portion of the passenger train?

A. A car that must go any way?

Q. 9. Yes, sir.

A. Well, there would not be so much difference.

Q. 10. What per cent.?

A. Of course, it is hard to tell, but I don't think it would be over ten or twelve per cent., or fifteen at the outside, that is a few tons; I do not mean if the car was loaded full to its capacity.

Q. 11. Well, say for about three and a half tons?

A. Well, that would come under the conditions that I answered
in the first place; I do not think it costs so much more
533 to haul a little batch like that, provided we have room vacant; the difference would not be so great as hauling a whole
car, of course.

Q. 12. What elements have entered into the computation you have made in your estimate that you have made in answering the last two or three questions of the cost of transportation on passenger and freight trains?

A. The formation of that opinion?

Q. 13. Yes, sir.

A. Well, I can hardly resolve it into its elements; it is from what I have seen and know of the power required to haul trains, and at different speeds and under different conditions; that is all; it is more a matter, as I said before, of opinion.

Q. 14. Is there any difference in the cost of cars that would be used in the two methods of transportation?

A. O, yes; there would be a considerable difference in the cost of cars; a baggage car or common express car will cost twice as much as an ordinary freight car.

Q. 15. Do you understand that express carriers handle their own express matter?

Defendant's counsel objected to the form of the question.

Q. 16. Assuming that an express carrier, at his own expense, with his own means and appliances, brings his express matter to the train, loads it upon the cars, remains in personal control of it while being transported upon the cars, does all of the handling, billing, and other manipulation, or accessorial service while *in transitu*, delivers it off the cars, and in all this receives no assistance from the railroad company: in other words, transports its freight, commonly called express freight, from the consignor to the consignee over the railroad, receiving nothing from the railroad except space in the car, in the passenger train, and the motive power drawing such car; about what proportion does the value of the service rendered in that case by the railroad bear to the value of the entire service performed to the transportation of the freight?

Objected to, as irrelevant.

A. You want my opinion of that, of course?

Q. 17. Yes, you are a railroad man.

A. I have no knowledge, nobody has knowledge, exactly of that, that I know of; some supernatural power might tell; it is only a matter of opinion; you mean what per cent.?

534 Q. 18. Yes; of the entire value of transportation, what the cost of the accessorial services represent.

A. O, well, that question cannot be answered, because the proportion of the charge for carrying that may be greater—more than the cost of transportation of it. Do you mean to ask the difference between transporting it under such circumstances and on an ordinary freight train? Why, that is just the assumption I have answered of the questions previously, exactly; I have assumed all that, as I said, not counting the billing and handling or collecting of freight, or anything of the sort.

Q. 19. I will put the question this way: Assume that it is worth a dollar to take a given package of freight from the store of John Doe in St. Louis, bill it and put it upon the train, do all of the handling about it, carry it to New Orleans, take it off the train and carry it to the office of Richard Roe, and making a final delivery to him, and be absolutely responsible for the safe delivery of it, and that all of this is done by an express carrier, except the space in the car and the motive power furnished by the railroad, everything else being furnished by the express carrier, what proportion of that one dollar would be a fair compensation to the railroad for the service it performed?

A. Well, that answer will involve some conditions; if you take it on a long haul like that from St. Louis to New Orleans, the billing and handling and collecting costs no more than it does to take it on a short haul from here to Belleville; so you would have to make a sort of average of such a thing; I should say on an average from forty to fifty per cent. would be about fair; costs the express company as much to handle from here if it was only going to Belleville, and it would not cost the railroad company half so much to haul; base it on the ton per mile, and I should say anywhere from forty to fifty per cent. is my judgment; of the revenue, about an even thing, I guess; I mean to save in speaking of an average, I mean to take in all the stations, the nearest stations and the most remote stations, and average them all with the intermediate stations.

Q. 20. Mr. Glover: Mr. Stevens, in considering the question whether hauling a ton on a common freight train, and hauling a ton of express freight in a baggage car costs most, have you considered the element of time consumed in running a common 535 freight train; or will I ask you this: Which consumes the most time, the running of a freight train through or a passenger train through?

A. It takes the most time to run a freight train through.

Q. 21. What is the general average of difference in one hundred miles?

A. Freight trains run about fifteen miles an hour, and passenger trains twenty to twenty-five miles an hour.

Q. 22. The running of the freight train would consume more or less time for the run?

A. It consumes more time for the run.

Q. 23. Would that be more expensive in that particular than the running of a passenger train?

A. The simple matter of the power of hauling that would cost no more, because of the time.

Q. 24. The simple haul would be about the same?

A. The simple haul would be about the same; take out the labor, as we assume to in this case—take out the labor, and the simple hauling, because it takes a few hours, would make no difference, in my opinion.

Q. 25. What is the difference in the cost of running a through train of freight and a through passenger train carrying express matter, in regard to the cost of the construction of the trains; how would the difference be in that; in favor of the freight or in favor of the passenger?

A. You want to know which costs the most, a freight or a passenger train?

Q. 26. Which of those elements cost the most?

A. The passenger train costs much the most.

Q. 27. Why? A. The cars are a good deal more expensive; they cost four or five times as much; a passenger car as a freight car.

Q. 28. Now, which is the heaviest, a freight train of the same number of cars, or a passenger train with the same number of cars?

A. Empty, without loading?

Q. 29. With the usual load of passengers, express matter, &c., as a passenger train runs, carrying, if you please, express matter, mails, and passengers and baggage, and a freight car, with its usual load of matter, which is the heaviest?

A. A train of the same number of cars?

536 Q. 30. Yes, sir.

A. A freight train loaded to its capacity as we load them now would be heavier than a passenger train simply loaded with passengers; but take the cars empty, the passenger train would be the heaviest, because now we load cars with twenty tons of freight in them frequently, if we can get it in.

Q. 31. I am talking about hauling freight in both kinds, all elements of expenditure of every kind, and am dealing now with the elements of weight and the pressure upon the rails; now, does the heavier train exert a more or less wearing effect upon the rails of the track?

A. The heavier the train the greater the wear, of course.

Q. 33. Now, sir, as to the employees running a through passenger train with its usual appurtenances of mails, baggage, and express matter and people, and a freight train with its usual appurtenances and its employees, which is more or less expensive in the matter of employees of service?

A. The passenger train; considerably more.

Q. 34. Now, in estimating as you have the additional cost per ton per mile for transporting express matter in a baggage car or a passenger car, have you considered all those things?

A. I have not considered them at all, because I have simply answered the question as to the cost of hauling the freight without reference to the labor and the wear and tear of the road or machinery, just the hauling.

Q. 35. Those things being considered and brought to your mind, what will you now say, or will you make any qualifications of your former statement in respect to the increased cost for hauling express matter in the baggage car, over the hauling of common freight, or a common freight train, leaving out any per cent.?

A. No; I do not think I would—under the same conditions, I mean.

Q. 36. What, then, will you say is the outside increased cost for hauling several tons, say from three to seven in a baggage car having that space for its reception over and above hauling the same amount of freight in a common freight train, the cost of hauling alone?

A. Well, I should say as I said before.

Q. 36. How much would cover it?

537 A. In a baggage car from ten to fifteen per cent. more, leaving out all the other elements except mere power.

Q. 37. Now, putting in all the elements which you have considered of the conditions, how much would cover the outside increased cost in that case?

A. I don't know what conditions you want to take it in; if the express company perform the labor.

Q. 38. Well, state your own conditions; state if the express company perform all the labor of handling.

A. And at the expense of collecting and everything of the kind. If it is simply hauling, the cost of hauling that freight would not change from what I said before, but there should be a compensation for hauling the messenger who has charge of that freight certainly, and taking the risk that you would take in hauling him and all that. They always haul the messenger with the express train for the express company; that costs something. I don't know but it is an inappreciable quantity, but I suppose there should be something for insuring his life, which they have to do.

Q. 39. Now, will you give the statement of what should be the increased cost considering all this.

A. Well, I thought I stated, in the question asked awhile ago, they asked what proportion of the freight charged by the express company should be given to the railroad company for the service it performs. I said I thought 40 to 50 per cent. of the whole amount charged.

Q. 40. Would be a fair compensation to the railroad for its service? A. Yes, sir.

Q. 41. Now, does your general knowledge enable you to state what is a fair compensation to a railroad taking the ordinary conditions, and a general average, for hauling a ton of freight, per mile?

A. They have different rates on different roads. Some roads it costs much more than others, because of the difference in the conditions, grades, curvature, &c.; the condition of the road, and the condition of the road-bed.

Q. 42. Are you acquainted with the St. Louis, Iron Mountain & Southern railroad?

A. I have been several times over it, but never made a critical examination of it.

538 Q. 43. What is its condition in respect to grades, curves, and its general construction for facility of transportation; how does it average with the general railroads?

A. Well, it has some pretty good grades. I do not think it has any worse grades than the Missouri Pacific, for instance. I doubt if it has any so heavy grades as some of the Missouri Pacific.

Q. 44. How does it compare with the Baltimore & Ohio?

A. I should think the Baltimore & Ohio had heavier grades and more curves.

Q. 45. How with the Pennsylvania Central?

A. I should think it had more curvature, I am certain, and more grades going over the mountains. The grade is pretty heavy on the Pennsylvania road.

Q. 46. Now, assume that the present year, the St. Louis, Iron Mountain & Southern Railroad Company received for hauling a ton of freight per mile, one cent and eighty-eight hundredths of a cent, what would you add to that as an increased cost of transportation for hauling from three to seven tons in its baggage car upon a passenger train, with your knowledge of its facilities and conditions, grades, curves, and general construction and location, fair compensation?

A. Well, those conditions would be the same on a freight train as a passenger train. The difference in the mere matter of hauling, as I said before, I would not take to be any more. I stated from ten to fifteen per cent., leaving out all the other elements but the motive power and space.

Q. 47. Will you state, if you have general knowledge of railroads and railroad business sufficient to enable you to state, what is a reasonable and a fair compensation to a railroad for hauling a ton of freight per mile, what is a fair compensation, a reasonable return for the service?

Objected to, as immaterial and irrelevant.

A. You mean a first-class road or an average road?

Q. 48. I mean any average road; suppose that it receive 1.88 from its freights?

A. You ask what the cost would be?

Q. 49. No, what would be a fair compensation?

A. For hauling, of course; that includes the cost and a fair profit.

539 Q. 50. You have taken into consideration all your freight, and then whether it be local or through freight?

A. Yes; the general average?

Q. 51. Yes; I wish you to state what is considered a fair compensation for the general average road for hauling freight, including the cost and expenditure of the road and its reasonable profits? A. Everything?

Q. 52. How much a ton per mile?

A. Two cents a ton per mile, I should think, would be ample compensation.

Q. 53. Can you state generally what amounts are paid to the various railroads, and through what ranges from the lowest to the highest compensation received by the average railroad is?

Objected to, as irrelevant.

A. No; I can hardly tell that.

Q. 54. Have you a knowledge what the Pennsylvania Company receives for hauling a ton per mile?

Objected to, as irrelevent.

A. I have a knowledge only through their official reports; I have read their official reports for a number of years, and they state those things with a good deal of minuteness.

Defendant's counsel objected to the answer, on the ground that that is not evidence according to the rules of law at all; it is not a fact within the witness' own knowledge.

Q. 55. I ask if he knows; have you a general knowledge of the rates of compensation received by the best railroads for carrying common freight in the United States?

Objected to, as irrelevant and incompetent; a general knowledge will not do.

A. No; I have not a general knowledge of the general rates in the United States; my knowledge is more particularly confined to those roads with which I am connected, that is the Pennsylvania system of roads.

Q. 56. Now tell us what the Pennsylvania Central, for instance, what its receipts are per ton per mile?

Objected to, as incompetent.

A. I can tell what their official reports show for the last year, that is approximately; I cannot give you the thousanth part of a mile.

540 Defendant's counsel objected to anything contained in the official reports of that corporation, as irrelevant and incompetent.

Mr. **Glover**: Now do you object that we do not produce the report?

Mr. **Thoroughman**: I have stated my objection.

Mr. **Glover**—Well, you may answer the question what they were last year?

A. Last year and 1879, they reported a little over seven mills per ton per mile for their freight receipts.

Q. 57. What do you know of the Pittsburg, Cincinnati and St. Louis Railway Company?

A. About the same I do of the Pennsylvania; I am connected with them, employed by those roads here, reading all their reports and knowing pretty generally what they are, too.

Q. 58. Now tell me what the Baltimore & Ohio receives per ton per mile for common freight transportation?

Objected to, as incompetent and irrelevant.

A. I have no knowledge at all.

Q. 59. Well, you know the St. Louis, Iron Mountain & Southern Railway Company; I have asked you about the average railroad; now I will ask what would be a fair compensation to that road, with your knowledge of its conditions during the year 1879–'80, for transportation of a ton of freight on a common freight train per mile?

Objected to, same as before.

Q. 60. I may state that its report is here, showing that it received 1 and $\frac{88}{100}$?

A. I will tell you that I do not feel competent to answer that question; I should want to know more of the conditions of the road than I really do; I would not want, as an expert, to give knowledge of a thing I know so little about; I have only been a few times over that road; of course I did not go over it with an idea of making an investigation of such a matter.

Q. 61. Supposing the St. Louis, Iron Mountain & Southern railway to have received in the year 1879 one cent and eighty-eight hundredths of a cent per ton per mile for transporting common freight, what amount in dollars and cents would be a fair compensation, to wit, for transporting five to seven tons in the baggage car of its express train per ton per mile?

541 A. My answer before would comprehend that; I should say 15 per cent. additional, just the cost of hauling the freight alone without other considerations.

Q. 62. What would you say as to the reasonableness of a charge for the St. Louis, Iron Mountain & Southern Railway Company amounting to ten cents and forty-five hundredths of a cent for the transportation of express matter per ton per mile?

Objected to, as incompetent, irrelevant, and assuming what may and may not exist.

A. Well, I should say that is a pretty large compensation.

Q. 63. Reasonable or unreasonable?

A. I would not want to pay that on freight.

Mr. THOROUGHMAN: Express matter he means.

A. Of express matter, when I speak of express I refer to express matter; there should be a distinction made in the case of carrying bank bills, or coin, or anything of that kind; it is more costly; that might not be unreasonable to carry bank bills, or gold, or bullion, or anything of that kind, or silver.

Q. 64. Why? A. Because the risk of carrying that is always considered greater.

Q. 65. Suppose there is no risk?

A. O, if there is no risk, then the transportation of that would be no more than carrying any other freight, would it?

Objected to, as leading.

A. There is a risk always in carrying valuable articles; all railroads make that distinction; if we carry a valuable race horse we always take a larger freight on it than we do on a common scrub horse; that is, on the same principle we charge more for carrying a ton of gold than we would a ton of pig-iron or lead.

Q. 66. Now let me suppose, in order to get your opinion without reference to this question of risk, that a box of coin delivered to a railroad to be carried, the contents not made known to the railroad, nor the value made known to the railroad, and the railroad receives the box, and requires the shipper, who does not disclose the value of the contents, to limit the liability of the railroad to fifty dollars, so that there is no risk on valuation, how would that effect your opinion as to the amount to be charged for expressage?

542 A. That would be different if the risk was assumed by the shipper; of course the extra risk or cost of the thing in case of a loss.

Q. 67. If it should appear that when the St. Louis, Iron Mountain & Southern Railway Company carries articles of value, what is called valuables, if the value is not disclosed to the railway company, and the bill of lading contains the condition, that the value of the package is received as being fifty dollars and no more, would that in your opinion affect the question of charge for carrying the coin?

A. Well, I think there is a question of law that would come in.

Q. 68. Never mind; I asked to assume the law that he is not liable.

A. O, if he is not liable, that is another thing; the question is whether he is liable or not.

Q. 69. Suppose he is not liable under the bill of lading that the St. Louis, Iron Mountain & Southern Railway Company gives; suppose the road is not liable to the shipper for the value of a box of coin beyond fifty dollars; then does it cost any more; should the charge be any more for hauling a box of gold coin weighing one hundred pounds than a box of lead weighing one hundred pounds?

A. Of course it costs no more, the simple hauling; I was speaking in my answer of the reasonableness of the charge on those things grounded on risks or danger of losses; our experience has been those bills of lading sometimes are thrown back on us as worthless; that is, they do not hold water; we have handled them in too many cases, and I have learned, by experience, to understand we cannot limit the liability as against our own negligence, the carrier's negligence; I will give an illustration in this connection: We transported a horse from here to Philadelphia, from East St. Louis to Philadelphia, which we had a contract signed by the shipper as well as ourselves, that in case of loss or damage, the value of the horse should be only considered one hundred dollars, and with that contract they sued us for ten thousand dollars damages on that horse, and they got judgment for four thousand in our courts here.

Q. 17. What did they allege?

A. They alleged negligence, that is all; a carrier can limit the liability provided he uses ordinary diligence.

543 Cross-examination by Col. THOROUGHMAN:

Cr.-Q. 1. Mr. Stevens, I would like to ask you two or three general questions about your railroad experience simply to get it in the record. How long have you been connected with railroads? A. 33 years last October I commenced.

Cr.-Q. 2. Now, generally in what capacity?

A. I have been in almost every capacity; largely in the freight transportation. I commenced on the Providence & Worcester railroad as breakman three months, then went into the freight office as freight clerk, and was promoted from that to master of transportation of the road within a short time, and until July, 1853, I was master of transportation of that road, which gave me full charge of all the freight department in all its ramifications.

Cr.-Q. 3. Now, how long have you resided in St. Louis?

A. I have resided here 23 years and a half.

Cr.-Q. 4. Now, what is your present business in connection with the railroads?

A. I am the general western agent of the Pennsylvania Company and the Pittsburg, Cincinnati & St. Louis Railway Company.

Cr.-Q. 5. How long have you been in your present business?

A. Connected with that establishment?

Cr.-Q. 6. Yes; doing the present business you are now in.

A. Well, about sixteen years.

Cr.-Q. 7. You then conceive yourself quite familiar, do you not, receipt as an absolute protection, as I understand you, to the railway company issuing it?

A. Not as against negligence, of course not; we have learned that by sad experience.

Cr.-Q. 22. I understand you to state that an express car, or a car that is run in a passenger train, is a much more expensive appliance of a railroad than a mere freight car?

A. Oh, yes; I said that.

Cr.-Q. 23. Now, it struck me you were making a mistake about one thing, but you may be right about it, and that is this: That the wear and tear of a railroad is occasioned more rapidly by weight than by rapid motion.

A. Oh, no; I don't think I stated it that way; I said a heavy train, other things being equal, was more destructive to the track than a light train; but a train loaded is more destructive than one empty. I did not state the other thing, because I know that is not the fact.

Cr.-Q. 24. Now, how is the fact in your opinion; suppose two trains are about equal weight; one goes fifteen miles an hour, and the other from twenty to thirty miles an hour; which would have the greatest effect to wear the rails?

A. The fastest train, of course.

Cr.-Q. 25. And the same result would follow the use of the machinery, would it not, the rapid motion?

A. Yes; it is more costly to run rapidly than slowly.

Mr. Glover: And more dangerous?

A. More dangerous and more costly; more destructive to the machinery; it takes more fuel, and various other considerations?

547 Cr.-Q. 26. I will ask you now if you have ever had any personal experience in hauling express matter yourself?

A. Simply express matter?

Cr.-Q. 27. Yes. A. No, sir; not further than as a railroad man; I have never handled it.

Cr.-Q. 28. Will you please state to Col. Broadhead and myself and to the examiner what your answer was with reference to the average of a long haul and a short haul of freight or express matter?

A. Well, I said the proportionate cost between the handling and hauling of freight a short distance was greater, the proportion of handling and billing and other incidentals was greater, on a short line in proportion than a long line.

Cr.-Q. 29. What did you fix the average at; did you state it?

A. I do not know that I fixed an average.

Cr.-Q. 30. If you did not, what would be the average fair compensation due to the railroad for the average haul, the long and the short haul, in view of all the wear and tear and expense and the natural profits the railroad would be entitled to make like other people?

A. You mean the per cent. of receipts?

Cr.-Q. 31. That is what I mean.

A. Well, that is the question I answered; from forty to fifty per cent.

Cr.-Q. 32. That is now what you fix it?

A. I should think so.

Cr.-Q. 33. But if I understood you rightly a little bit ago, you said, upon a further investigation, you might modify your opinion about that.

A. Possibly, but it is only an opinion any way you know; might say, guessing somewhat. It is not exactly guessing, but it is my opinion from what I have seen and known; I should think that is right. For instance, I will illustrate: Suppose you charge from here to New York three dollars a hundred for carrying freight; that would be about the express rates; I should say, if the railroad company got half of it, it would be pretty well paid.

Cr.-Q. 34. Now, in that connection let me call your attention to the questions asked by Mr. Glover in reference to the compensation for railroads; you spoke of railroads in the East, the Baltimore & Ohio, the Pennsylvania Central, and others. 548

A. Those are the ones I am most familiar with.

Cr.-Q. 35. Now, I will get you to state whether that could possibly furnish a guide in making an estimate of the Iron Mountain railroad, in view of the sparsely populated country through which the St. Louis, Iron Mountain & Southern railway runs, and the distances between stations, and the few passengers they carry, and in view of the fact that a car will go from station to station till it gets to two or three stations before it gets a load of freight at all; whether all those matters would not enter into your consideration, and whether a Western railroad would not be obliged to receive more money, situated as the St. Louis, Iron Mountain & Southern railroad is, than an Eastern railroad, to make money at all?

A. Yes; I have taken that into consideration in answering my question as to fair compensation; I think I said a good compensation a ton per mile to a railroad would be two cents; I meant the average roads taking in this; of course the compensation of the Pennsylvania road, for instance, is considerable less than one cent per ton per mile, taking all its freight, local, through, and all; it is less than one cent; and I think the St. Louis, Iron Mountain & Southern Railway Company ought to be able to haul at twice the cost of that.

Cr.-Q. 36. But I understood you to state you would not fix—not knowing enough about the road to enable you to fix what would be a fair compensation.

A. No; I am not sufficiently acquainted with all the conditions of the St. Louis, Iron Mountain & Southern railroad to state that.

Cr.-Q. 37. Now, you also stated you thought there were higher grades—heavier grades on the Missouri Pacific than upon the Iron Mountain; do you think there is a grade anywhere this side of Kansas City upon the Missouri Pacific that reaches 104 feet to the mile?

A. No, sir; I do not think there is; I think 90 feet is the highest there is; I did not know the Iron Mountain road had such a grade.

Cr.-Q. 38. There is one at Arcadia that reaches 104 feet.

A. Well, that is a heavier grade than we have on the Pennsylvania road.

549 Cr-Q. 39. Isn't it over two feet heavier than any grade on the Pennsylvania Central?

A. They come up the mountains; there the grade is about 100 feet to the mile; I have in my office the exact history of that, and I think it is about 100 feet to the mile; but then that is a long grade of twenty miles; a grade of 80 feet for 20 miles is a great deal more than 104 feet for two miles.

Cr.-Q. 40. Now, supposing this grade reaching 104 feet runs for 11 miles; is there a heavier grade on the Pennsylvania Central anywhere than that? A. I think not.

Cr.-Q. 41. Are you familiar enough with the Iron Mountain & Southern railway to tell me that you know where Gad's Hill is?

A. No, I do not; I could not tell when I got there.

Cr.-Q. 42. You cannot tell me how far it is from Gad's Hill to Arcadia?

A. No, I cannot; I am not familiar with the distances there at all.

Signature waived.

At this point, by consent, adjourned till 3 p. m.

3 p. m., parties met pursuant to adjournment.

E. W. Woodward, of lawful age, being produced, sworn, and examined, testified as follows:

Direct examination by Mr. Whitfield:

Q. 1. What is your name, age, residence, and occupation?

A. E. W. Woodward; age, fifty-two; residence, Ohio; and occupation at present in connection with the transportation on the St. Louis bridge and tunnel.

Q. 2. If you have been connected with railroads for any portion of your past life, state with what roads, and for how long a time, and in what capacity, and what connection you have had with both freight and express transportation on railroads?

A. I have been connected with the transportation business for about thirty years; first upon the Fitchburg road, in Massachusetts, and afterwards upon various roads in Ohio, and latterly upon the Indianapolis & St. Louis railway; during a portion of the time I was superintendent, and was finally president of the Indianapolis & St. Louis railroad.

550 Q. 3. What experience have you had with regard to the transportation of freight upon the freight trains, and upon express trains, if any?

A. Such experience as would naturally follow any one who is superintendent and manager of a railroad train. During a portion of the time I was superintendent of some of the roads named; I was only president of the Indianapolis & St. Louis road.

Q. 4. I would like for you to state, if you can, what is the comparative cost of the transportation of freight upon a passenger train and upon a freight train; I mean of such character of freight as is practically capable of being transported upon both passenger and freight trains. Is there any difference in the cost to a railroad between transportation upon a freight and passenger train; and, if so, in favor of which is the increased cost? And also if there is an increased cost upon one character of train more than there is upon the other, state as accurately as you can how much that increase is.

A. In my opinion it costs more to haul freight upon the passenger train than upon the freight train; the amount of extra cost depends something upon the character of the passenger train on which the freight is hauled; if hauled upon a local passenger train, involving many stops, checkings of the train, it would create a greater extra cost over and above the cost of the hauling on a freight train than would be the result from hauling it on a through passenger train where no stops, and the consequent wear and tear attending them, were required. The service of the railroad employees is greater in connection with the local trains per mile than in connection with a through train. The extra cost of hauling freight in limited quantities on a passenger train over and above hauling it on the freight train at the customary speed would, I am of the opinion, amount to from twenty to twenty-five per cent. more by limited quantities; I mean such amount of freight as the regular engine of the passenger train can take through on regular ordinary time.

Q. 5. How many tons of freight will an ordinary baggage car, such as are usually run in passenger trains in this Western country, carry?

A. I would rather you would put that question as an ordinary baggage or express car, and I will qualify it to that.

551 Q. 6. Well, sir, baggage or an express car; how many tons will an ordinary baggage or express car carry?

A. There are frequently carried in the regular baggage cars, along with the baggage, from three to five tons of express matter; the regular express cars, known and considered as exclusively express cars, frequently carry from eight to twelve tons.

Q. 7. In the average operation of railroads and passenger trains upon railroads, what amount of transportation has it been found practicable to give to the express company in the passenger train?

Objected to, because it is immaterial and illegal, and because it is irrelevant.

A. From one to three cars, depending upon the size of the passenger train; in other respects that is upon the number of passenger and sleeper coaches in the train; but upon some of the railroads doing a larger passenger business it is not practicable to haul any express matter at all, on account of the great number and weight of the regular passenger coaches. Such roads make up the express and baggage matter into what they call other sections, as the case may be, and run them at the same speed, following the passenger portion of the train.

Q. 8. I wish you would explain there, Mr. Woodward, what you meant by express matter in limited quantities, when you used the expression "limited quantities" awhile ago.

A. I mean such limited quantities as the engine of the train usually hauling it can take through without creating delay, or heavy work that shall drop them behind time.

Q. 9. If you mean to state that it would cost the railroad company more to transport an unlimited quantity of freight at the speed with which express matter is conveyed upon passenger trains, please state so, and how much additional it would cost the railway company to transport an unlimited quantity of freight per day at the same speed that the express matter is carried on a passenger train?

A. I would first say, that it would be impossible to take an unlimited quantity upon a passenger train; if it were necessary to take what you perhaps mean by an unlimited quantity, and haul it over the road at a speed equal to that of a passenger train, I would add as a cost of doing such work, twenty to twenty-five per cent. 552 above the cost of hauling it on what is considered the average freight train time; I wish to explain that freight train time is differently regarded by different railroads; many of the railroads are running their freight trains now at twenty to twenty-five miles an hour, others are still holding on upon the old-fashioned time of ten to twelve miles an hour; by the average freight train time I mean about fifteen to eighteen miles an hour.

Q. 10. In practice, do the railroads which run those fast freight trains make a higher charge to the public for the transportation of freight based upon the increased speed of its fast freight trains?

Objected to, as irrelvant.

A. No, except in the case of the Baltimore & Ohio oyster trains; perhaps one train on the New York Central railroad, there is some extra charge made for the speed furnished.

Q. 11. Doesn't that Baltimore & Ohio oyster train, of which you speak, travel with the speed of a passenger train?

Objected to, as irrelvant and incompetent.

A. It travels very nearly at the rate of speed of a passenger train.

Q. 12. Based upon your knowledge of railroad transportation and your long experience and your knowledge of railroads generally, will you state what is a fair and reasonable remuneration to a railway company, for the average transportation of one ton of freight, over one mile of railroad, stating the average, for the average road, and also stating, if you can, the limits that will embrace any road which can be called in working condition?

A. Rejecting in the consideration all of the smaller roads with a light business, and referring simply to the large roads, with a competent business and considerable business, I should believe that one cent and a half per ton per mile would be a fair rate on through business.

Q. 13. Now, if you have a similar opinion in regard to local business, please state what would be a reasonable remuneration for local, and then as far as you can average, and say what will be a reasonable average compensation for through and local business?

A. Local business moves in distances from 3 to 150 miles, and

553 as it approaches long distances of haul, it very nearly becomes through freight, owing to the length of the road. The longer business can be done for less per mile than the short haul; I should estimate the fair rate for local business from two to three and a half cents per ton per mile, depending upon the distances, the larger price for the shorter distance. I wish to qualify this by stating that all distances under ten or fifteen miles become an element necessary to consider outside of this estimate. It is customary on Eastern railroads.

Mr. THOROUGHMAN: I object to your stating anything about Eastern railroads.

A. It is customary on Western railroads to add considerable excessive rate upon very short distances.

Q. 14. Now, to average it over the entire road?

A. I cannot do it, sir.

Q. 15. Does, or does not, a good deal of the excessive and disproportionate remuneration for very short distances rest for its justification upon the fact that a package going a short distance requires the same accessorial handling at its termini that a package going a long distance requires, and that the service that is rendered upon the train is disproportionate to the whole service that is rendered in receiving, carrying, and delivering packages?

Objected to, as irrelevant and incompetent and as leading.

Q. 16. I will withdraw the whole question and ask you what does this increased cost for short distances depend?

A. The increase per mile for short distances depends upon the fact that the car services, the handling of it, amounts proportionately to the freight regarded much larger than in the long haul.

Q. 17. You limit your replies or make them applicable only to what you call the higher class of railroads having a competent business. Does a railroad 688 miles long, worth, as is claimed by its officers, thirty-five to forty millions of dollars, and doing an annual business of between five and six millions of dollars and yielding a net income of two millions three hundred thousand dollars, come within the class of railroads to which you intend that your answer shall be applicable?

Objected to, as leading, incompetent, and irrelevant.

A. I answer that it does.

554 Cross-examination by Col. THOROUGHMAN:

Cr-Q. 1. Now, Mr. Woodward, I will get you to state, if you please, how familiar you are with the Iron Mountain railroad; you know what railroad I mean when I call the Iron Mountain; it is the St. Louis, Iron Mountain & Southern Railroad Company.

A. Well, I have never been over the Iron Mountain at all.

Cr-Q. 2. And hence know nothing about it.

A. I have no knowledge; I now nothing about it except the six or eight miles in the city of St. Louis.

Cr-Q. 3. Now I will get you to state if the estimates that you have been furnishing the counsel for the plaintiff here have not been based upon your experience on Eastern railroads and the very best class of Eastern roads; what I mean by the best class of Western roailroads is roads running through the most populous parts of the Western States.

A. Yes; I may say that my experience in connection with transportation is on the Ohio and Indiana and Illinois roads, all about a general average character of roads.

Cr-Q. 4. And you have also average experience in the Eastern roads, in the most populour States of this country, haven't you?

A. Yes, sir.

Cr-Q. 5. Now, as a railroad man, tell us whether it is not true that the per cent. that you have named, namely, one and a half per cent. per mile for a ton of freight, would not be *be* infinitely better pay there thau a larger sum would where the population was very sparse and commerce on the road very scarce?

A. Your question would open the door for a very considerable amount of consideration before a very careful answer could be given.

Cr-Q. 6. Well, what suits your convenience about that; because I would like to have it; make if you choose such answers as will satisfy—or I will wait till another time till you think you can say you are better informed about it after considering it.

A. Your question opened up the opportunity for persons to discuss somewhat the theory of railroading.

The hauling of freight on the roads of Ohio, Indiana, and Illinois is done at a cheaper rate per ton per mile, as far as regards
cost, than upon the roads East, in New York and New
555 England; the grades are generally better in the West. The
grades of the roads west of the Mississippi are not generally
quite as good as those of Ohio, Indiana, and Illinois, but are better than those in New York and East.

The mere fact of the country being sparsely settled, so that it is not dangerously so in the way of of war, and interruption is an advantage to a railroad in hauling through freight, so far as cost is concerned, unless the fuel is more difficult to obtain than in densely populated regions; local freight in all well-populated regions is much larger, better, and more satisfactory than in the sparsely populated regions.

Cr.-Q. 7. Railroad companies regard local freight as profitable to them, do they not?

A. They regard it as more profitable than through freight.

Cr.-Q. 8. The other fact being true, that through freight can be hauled cheapest?

A. Yes; because the local freight invariably obtains better rates.

Cr.-Q. 9. Now, what I meant that you should understand by my question is this: Is not a railroad as such worth more in a largely producing and populous country than in one that is not largely producing or is not populous?

A. It certainly is, if it has not rivals too close beside it.

Cr.-Q. 10. I am not talking about those matters, of course. Now, the short of what I want to get in your mind is this: Isn't the fact true that the more business a railroad has the cheaper it can do it? A. Yes, sir.

Cr.-Q. 11. Now, you answered one question that I do not think you understood; Gen. Whitfield and I wish to ask it of you again. You answered Gen. Whitfield, as I understood you, that where the passenger traffic was so heavy that the road was driven to the necessity of carrying its baggage and express matter upon another train about upon the same time of the passenger train, that that would add to expense of that service no more than twenty to twenty-five per cent.; is that what you meant to say?

A. I mean to say that over and above the cost of hauling an average freight train.

Cr.-Q. 12. Then you did not take into consideration the fact of creating this train, did you, and manning it, and putting it upon the road as anything?

556 A. I took into consideration that this second section, so called, has become a necessity, in order to carry the baggage of the front section of passenger and sleepers which have preceded, and consequently, in connection with that baggage, simply have passenger coaches connected with it, and sufficient express matter can be taken to make up a solid train; and that in making up such a solid train, limited to such a size as an engine can reasonably pull, the cost per mile per ton I would consider twenty to twenty-five per cent. greater than on the railroad.

Cr.-Q. 13. Are you now, Mr. Woodward, interested in any of the railroads of the West or East?

A. That is the hardest question you have asked me. I have not a dollar invested in any railroad, except it be railroad bonds.

Cr.-Q. 14. Have you any in the express companies of any of them?

A. None in the express companies of any of them.

Cr.-Q. 15. And no interest in any railroad, except a bonded interest? I meant to ask if you had stock in any railroads.

A. Except you may consider a very small interest in the Tunnel railroad, of St. Louis, which I presume is not material in this case?

Re-examination by Mr. WHITFIELD:

Q. 1. You were asked about the comparative values of railroad transportation upon railroadsin the densely and railroads in the sparsely populated countries, and whether or not your conclusions were not founded upon your knowledge of the railroads in the densely populated States of Ohio and Indiana and Illinois; is it not a fact that, whilst the inhabitants are more numerous in those States, the railroads are more numerous also?

Objected to, as leading and irrelevant.

A. That is generally the fact.

Q. 2. Is it or not the case that the Iron Mountain railroad affords the only railroad facilities to a much broader belt of country than any other railroad in the three States you have mentioned?

Col. THOROUGHMAN: He said he did not know anything about the Iron Mountain railroad.

A. I would qualify my remark that I do not know anyting about
the Iron Mountain railroad by saying that I mean its physical
construction and immediate surroundings, except such gen-
557 eral knowledge as a person looking at the maps and associ-
ating with railroad men is liable to be possessed of, that the
belt of country they furnish railroad facilities to is about the same
as that of most roads to which I heretofore referred.

Mr. GLOVER: You mean they or it?

A. It—the St. Louis, Iron Mountain & Southern—which it runs through.

Q. 3. Isn't it true that every important railroad in the three States that you have named together has a competing railroad and competition between its termini?

Objected to, as leading, irrelevant, and because the ground has been gone over by Mr. Glover.

A. I believe they have.

Q. 4. How far can you, starting upon one of those chief railroads in Indiana, Illinois and Ohio, travel in the direction at right angles to it, in those States without intersecting another railway?

Objected to, as it is a matter that one can learn in going to school in the geographies, and as leading and irrelevant.

A. I do not know, sir.

Q. 5. Do you have to travel any very considerable distance?

Objected to, as indefinite and vague.

A. I cannot tell; it would require considerable examination of the map.

Signature waived.

Adjourned until to-morrow morning, January 7, 1881.

ST. LOUIS, *January* 7, 1881.

By consent of counsel for both parties, the taking of testimony in the above entitled cause was resumed before George Brown, L. L. Walbridge being absent through sickness.

C. H. ALBRIGHT, being duly sworn on the part of plaintiff, testified as follows:

Direct examination by SAMUEL T. GLOVER, ESQ.:

Plaintiff's counsel shows the witness a paper purporting to be a copy of a letter, dated December 2nd, 1880, addressed to Thomas Allen, Esq., president of the St. Louis, Iron Mountain & Southern Railway Company, of St. Louis, purporting to be signed, H. C. Fisher, superintendent of the Southern Express Company.

558 Plaintiff's counsel says to the defendant's counsel present, that this is a letter-press copy of that letter, and asks counsel whether he requires the production of the original.

Mr. **Thoroughman**: I do not; I require proof that this is a copy, but don't require the production of the original.

Q. 1. Plaintiff's counsel then shows witness the paper aforesaid and asks him to state what it is.

Witness: That is a letter-press copy of a letter written by the superintendent of the Southern Express Company, H. C. Fisher, to Mr. Thomas Allen, president of the St. Louis, Iron Mountain & Southern Railway Company.

Mr. **Glover**: I will read it as follows:

"St. Louis, *December* 2nd, 1880.

Thomas Allen, Esq.
President, St. Louis & Iron Mountain Railway, St. Louis.

Dear Sir: In the modified order of his honor, Judge Treat, United States court, eastern district of Missouri, of date November 6th, 1880, in the case of the Southern Express Company *vs.* The St. Louis, Iron Mountain & Southern Railway, it is directed 'that the defendant be enjoined from including under the term' 'reasonable charges' any accessorial charges.' Having been advised by General Superintendent Soper that the express department of the Iron Mountain road was wholly under the direction of Mr. Aikin, its superintendent, I called to see the latter on November 7th, with a view of ascertaining what concession from its regular rates would be made for such "accessorial," and was informed then and upon two subsequent occasions by Mr. Aikin that no deduction whatever would be made.

The order further decrees 'the said rates are as to the plaintiff not to exceed those now established.' Notwithstanding this, Mr. Aikin, as superintendent, under date of November 11th, issued a circular to his agents directing, 'on sacks, boxes and chests of packages, charge three times merchandise rates; on safes or treasure boxes containing coin or valuables, charge six times merchandise rates; enforce this order from date of its receipt.'

Since November 11th, the rates named in this circular have been applied to matter offered by our company to be transported in the care and custody of its messengers over the Iron Mountain road, and pre-payment at these rates has been exacted as a condition upon which we are to be permitted to forward such matter and which we have been forced to pay, and have made proper protests.

As no such excessive rates were applied to or exacted from
559 our company anterior to the order of Judge Treat hereinbefore
referred to, we consider the action of Superintendent
Aikin as antagonistic to the letter and spirit of the order of court.

The order of the court further stipulates: "The defendant, his agents, etc., are hereby enjoined * * * from preventing the plaintiff from enjoying equal facilities in the conduct of its express business, etc." Feeling assured that under the foregoing no hindrance or obstacle would be placed in the way of our company availing of the same facilities enjoyed by the express department of your road, we tendered our express matter with messenger in charge of same, to be forwarded on the train leaving St. Louis on the night of November 9th, and the matter and messenger were refused transportation by Messrs. Dudley, Aikin, Valentine, and other officers or employees of the St. Louis, Iron Mountain & Southern Railway Company. On this occasion, a messenger of the Iron Mountain railway, with freights, etc., in his charge, left St. Louis in the apartment usually allotted for express. The order referred to in substance enjoins your company from charging ours a greater rate on express matter than it charges the public.

The discriminations in this connection are numerous and continuous. This is especially the case on the matter going from St. Louis to Texarkana; notwithstanding our protests that the same is in violation of the injunction order.

In bringing these facts to your notice, it is with the hope and belief that, as president of the road, you will give such direction as will prevent any further discrimination against our company, and permit our business over your road to be continued and conducted without hindrance and annoyance and in accordance with the order of the court herein referred to Your reply will reach me at the Southern Express office on Fifth street.

Asking your early attention and reply to the foregoing, I am, very respectfully,

H. C. FISHER,
Superintendent Southern Express Co."

Plaintiff's counsel produces and shows to the witness a paper which purports to be a letter, dated St. Louis, December 6th, 1880, addressed to H. C. Fisher, Esq., superintendent Southern Express Co., purporting to be signed Thomas Allen, president St. Louis, Iron Mountain & Southern Railway Co. Exhibits said paper to defendant's counsel, Col. Thoroughman, and asks him if he requires proof that the signature to that letter is in the handwriting of Thomas Allen.

Col. THOROUGHMAN: No; that is Mr. Allen's signature, but the body of the letter is not his handwriting.

560 Q. 2. Plaintiff's counsel shows the said letter, which is admitted by defendant's counsel to be signed by Thomas Allen, and asks witness to state what he knows about it, and where it came from.

A. That was handed me by a messenger boy, addressed "H. C. Fisher, superintendent Southern Express Co., St. Louis."

Q. 3. About what time?

A. Either December 6th or 7th—about that date; I am not certain that it was December 6th, neither am I certain that it was the 7th.

Q. 4. What did you do with it?

A. I kept it by direction of counsel.

Q. 5. Where was Mr. Fisher?

A. Mr. Fisher then was absent from the city.

Q. 6. Did he ever see it?

A. He has never seen the original; I think he has seen an exact copy; he knew I had it.

Q. 7. It has been since in the archives of the Southern Express Company?

A. Kept by me in my safe.

Q. 8. What is your relation, Mr. Albright, to the Southern Express Company?

A. I am agent of the Southern Express Company in the city of St. Louis.

Plaintiff's counsel proceeds to read said letter, as follows:

"St. Louis, *December 6th*, 1880.

H. C. Fisher, Esq., *Sup't Southern Express Co.*

Dear Sir: I have received your letter of the 2d inst., and noted its contents. It has been and is the intention of this company to obey the order of injunction of his honor, Judge Treat, in letter and spirit, and I am not aware that we have violated it in any instance. If it has been violated by us, it has been unintentional or accidental. I find by referring to the order of court, a copy of which is before me, that you do not literally quote what his honor, Judge Treat, said concerning accessorial charges. The court says: 'And it is further ordered that the defendant be enjoined from including under the term 'reasonable compensation' any accessorial charges.' Now, what we understand the court to mean when it uses the phrase 'reasonable compensation' in the connection it does with reference to accessorial charges, is this, that the defendant shall
561 not, under the guise of 'reasonable compensation,' impose burdens upon the plaintiff for accessorial services performed by it, and, so understanding the court's order, this defendant has conformed to it, in both letter and spirit, in so making its rates of tariff and charges that there would be no room or ground of complaint of any such reason, and has never, in any form, attempted to make any charges for any service of this sort performed by the plaintiff or any other person.

Again, the court did say: 'The rates of the plaintiff not to exceed those now established;' and to this the defendant has actually in every sense conformed in its dealings with your company and the public. But yet, finding that its tariff had not provided for all articles that were carried by express companies, and finding that those articles were being presented to the express department of this company, it did add for those articles, that the tariff then existing did not provide for other and different charges than those named in the tariff, not in violation of the court's order, but in furtherance of it, which charges thus added to the then existing tariff are in every sense just and reasonable, and made after full consultation, not made for your company alone, but made for the public, who send by the express department of this road like packages of valuables and property, and they are no more enforced against your company than they are against the public generally, our understanding the court's order being that we should make no discrimination between you and any other person in like business, nor have we the disposition to do anything of the sort, even had the court said nothing upon the subject. I do not understand that you make any point in your letter upon the fact that you are required to prepay for things carried by us for you; yet, inasmuch as you name the fact, I will say that your course of dealing with us has not been of a sufficiently satisfactory character and nature for us to extend to you our credit.

I know of no instance in which there has been any discrimination or privileges allowed to others that have not been accorded to you. Should such case be pointed out, I would take pleasure in having it corrected, my intention being, independent of the court's order, to treat everybody who patronizes the Iron Mountain railroad equally and justly in respect to the transportation of freight. You do not in your letter specify any case, or in what respect or at what time, the agents and employees of this company have discriminated against your company. So far as I have been able to learn anything about it, I judge that you are totally mistaken in your assumption that there has been any discrimination. In regard to what you say with reference to what happened on the 9th of November last, I am informed that you really had neither messenger or freight of which you could or did make a tender; that your freight agent or
562 employee was upon the ground, stating that he had a messenger and freight ready to go upon that train; but when he was asked where the messenger was and where the freight was, and was told to bring it forward, he was unable to produce either freight or the messenger. But this train which started upon that occasion is one which has been put upon the road since you have filed your bill, and is not in any way involved in the litigation, so far as this proceeding between this company and yours. I do not think you have the facts correctly as to this company sending freight and an express messenger upon that train. Your letter complains that there have been discriminations in charges made against you for freight shipped by you over our road to Texarkana. You must be in error. It is not the intention of this company to do any such thing, and I am informed by those who ought to know that you have in this and all other respects been charged the same that everybody else is charged. In a business such as you and we are doing your experience must teach you that there will be some irregularities and some complaints on both sides. I am also receiving complaints and information of unjust treatment extended to us at the hands of your company. I intended to let them pass, and wait until they could be heard at the proper time and proper place. I did not believe it was the intention of the court, by its order, to tie us up and leave you free to abuse the privileges you have on this road.

I am in receipt of complaints of great wrongs perpetrated upon this company by your employees, such as, for instance, shipping packages purporting to go to Poplar Bluffs, on the line of this road, charged for and paid for as if destined to Poplar Bluffs, which packages your messenger, after getting in the car, unpacks, and exposes the fact that they are destined for Little Rock, Texarkana, and other places far beyond Poplar Bluff, thereby committing upon this company a direct fraud, and thereby cheating it out of the just compensation that it is entitled to for carrying your freight. I am informed, also, that it not unfrequently happens that your employees and agents put your money safes upon the express cars of this company empty, and carry the treasure that was to go with these safes upon their persons and in haversacks, and after paying the tariff to this company for the empty safe, and after our trains get in motion, then they would take the money thus upon their persons and in their haversacks and put it in the safe, and carry it the entire length of our line, without paying any compensation to this company therefor whatever, simply having paid the charges upon the empty safe.

Now, I say, these things, I am informed, are occurring daily, and
if abuses are to be corrected by correspondence, and if the
563 disposition on the part of your company is to deal candidly
and fairly with this company, would it not be well for you
first to set your own house in order?

Very respectfully, THOMAS ALLEN,
President St. L., I. M. & S. R'y Co."

Q. 9. Mr. Albright, you have stated already in part what your connection is with the Southern Express Co. Will you state how long you have been in the service of the Southern Express Company? A. Ten years exactly this month.

Q. 10. At what places, Mr. Albright?

A. I was first employed as messenger, running between New Orleans, Louisiana, and Humboldt, Tenn.; I afterwards went to Memphis as clerk in the office; I remained in that place as clerk in the express office there for, I think, nearly four years, in various clerical positions, and then was made agent at Jackson, Mississippi, where I remained in that capacity for about 18 months, and then came here in the spring of 1878; I was then appointed agent in St. Louis.

Q. 11. You have been here ever since? A. Yes, sir.

Q. 12. What knowledge have you, if any, of services rendered by the Southern Express Company in the matter of collecting and delivering express matter received by it to the St. Louis, Iron Mountain and Soutern Railway Company for transportation on its railroad?

A. I am familiar with the details of our business in St. Louis. I have some knowledge of it.

Q. 13. Will you please tell the examiner what is done and what it costs your company in collecting and delivering a ton of freight for transportation on the St. Louis, Iron Mountain and Southern railroad as express matter. Just take, if you please, a ton of freight composed of 2,000 pounds, of such general matter as you are in the habit of receiving and transporting by the Iron Mountain railroad; give me an idea of the number and kind of packages that there are ordinarily?

A. Where the run consists—I have made the memorandum here.

Q. 14. Give me that memorandum. In handling a ton of freight by your company upon any day, how many packages would that ordinarily be composed of?

A. I would say between 75 and 100; it would vary between 75 and 100 ordinarily.

564 Q. 15. Daily? A. Yes, for a ton of freight.

Q. 16. Of what amonts would the packages ordinarily be?

A. The weights would be various.

Q. 17. Give me an idea of the number of packages and the weights that go to make up that ton of freight? I don't mean that you should say exactly; state how it would be on the average composed—the constituents of a ton?

A. Say twenty packages of three pounds and less; thirty-four packages—I get this from the calculation I have made—thirty-four packages of ten pounds and less, and over three pounds—between three and ten pounds, and then ten packages between ten and fifteen pounds; twenty packages of between fifteen and thirty pounds; eight packages of between thirty pounds and fifty pounds, and three packages of between fifty and one hundred and fifty pounds each.

Q. 18. Is that statement which you have made a showing of what has actually occurred, or is it your general idea of how the business runs?

A. It is my general idea of how the business runs, made up from an examination of various runs on our books.

Q. 19. Tell the examiner what is done, how your business is conducted, how this express matter is collected, and how it is forwarded to the railway company, by what means and how it is delivered to the railway company for transportation as express matter; just run right over it?

A. It is collected through the city by our wagons and brought to our office, handled, weighed, and way-billed. It is checked by the messenger; the messenger compares the freight with his way-bills to see if the run is correct, then it is hauled to the cars in charge of the messenger, placed in the cars by our own employees, and left in charge of the Southern Express messenger on the train.

Q. 20. By what instrumentality is it hauled from your office to the railroad cars; by your wagons? A. By the wagons employed by the Southern Express Company for that purpose.

Q. 21. Will you state to the examiner what is the reasonable cost of collecting, handling, way-billing, listing, hauling, and delivering to the St. Louis, Iron Mountain & Southern Railway Company a ton of freight in the way in which you have described it; what is the reasonable cost of it?

565 A. I don't know that I could go into the details of the reasonable cost, never having made a thorough calculation of it; but I have calculated what it would cost us if we hired the carrying of that ton in the city here, from rates established by persons engaged in that business.

Counsel for defendant objects, as incompetent; that the fact cannot be proved in that manner.

Q. 22. Give us the estimates which you have made, beginning with the small packages, and state what the reasonable compensation for hauling them, so far as you know, as far as you understand the charges made here by the city express; the market value of that character of service or other haulers.

A. Say for 20 packages of 3 pound and less, one dollar, or five cents each; 34 packages of 10 pounds, $3.40 for the whole, or 10 cents each; ten packages of 15 pounds each, 150 pounds, $1.50, or 15 cents each; 20 packages of 30 pounds each, $5.00; 8 packages of 50 pounds each, $2.80; 3 packages of 150 pounds each, $1.50. The aggregate of the lot being 2,000 pounds, or one ton.

Q. 23. What does it make? A. For the cost of a ton, $15.20.

Q. 24. Now, Mr. Albright, ordinarily from what distances round your office in the city of St. Louis, would that 2,000 pounds of freight be gathered up by your express wagons?

A. It would be gathered within the boundary limits.

Q. 25. Name them? A. I cannot name the boundary limits north and south; I can west; Jefferson ave. is the west.

Q. 26. You don't go farther west to get express matter than Jefferson ave.? A. Jefferson ave.

Q. 27. You don't know how far you go north? A. I do not know exactly how far we go north.

Q. 28. Can you find out? A. Yes, I can find out.

Q. 29. How far do you go south? A. That I cannot tell exactly; I am not familiar with the streets down there.

Q. 30. Do you cross the bridge into Illinois? A. No.

Q. 31. Now, Mr. Albright, will you state whether or not when that ton of freight is put into the baggage car of the St. Louis, Iron Mountnin and Southern Railway Company, it receives from your company any more service during the transportation, if so, what?
A. It is in charge of our employees until it is delivered to the consignees.

566 Q. 32. Let us suppose that a ton of freight is going through to Texarkana, and you send a messenger with it, do you pay anything for the transportation of the messenger upon the car?
A. Yes, sir.

Q. 33. What do you pay, the trip through to Texarkana from St. Louis?

A. My calculation made this morning is $16.90.

Q. 34. Never mind the calculation; the question is from you, whether you know what it is? A. I made that on the mileage which was given me; I don't know positively what the exact mileage is; we pay 3 cents a mile in Missouri, and then we pay three and half cent- a mile through Arkansas to Texarkana.

Q. 35. You pay three cents a mile in Missouri and three and a half cents a mile in Arkansas? A. Yes, sir.

Q. 36. Do you know whether that $16.90 is the full passenger fare upon the railroad, or diminished passenger fare?

Defendant objects, as irrelevant and incompetent.

Q. 37. Do you know whether in that $16.90 you pay full passengar fare for your messenger?

Defendant objects, as leading and irrelevant.

A. We purchase from the Irom Mountain railroad thousand mile tickets, first-class tickets to be used in Missouri, and 1,500 mile tickets, first-class tickets, to be used in Arkansas.

Q. 38. Do you pay full fare, is the question?

A. Yes; that is full fare.

Q. 39. Now, has that messenger of yours all the accommodations of a full fare passenger, or not?

A. He rides in the car with his freight; he has charge of his freight.

Q. 40. What facilities is he furnished by the railroad company? If any, state what they are.

A. He is only furnished a car; I think the railroad company furnished a stove in the car; that is about all; and fuel, of course, to keep the car warm during the winter.

Q. 41. How is he transported in that car; does he stand up or sit? A. He sits down if he has a chair.

Q. 42. I want to know what the fact is?

A. The messenger carries his own chair with him; the railroad company don't furnish him a chair.

567 Q. 43. What is he there for?

A. He is there for the purpose of taking charge of his express matter, attending to it.

Q. 44. What does he do, if anything?

A. He does all the work.

Q. 45. What is the work?

A. The work is that he sees that he has his run in the car, or sees that he has his freight in the car; he checks it, writes it up upon his receipt book, and as he delivers it to our agents at terminal points, he takes receipts for it; he has entire charge of it until he delivers it to other employees of the Southern Express Company.

Q. 46. Suppose now, when he gets to Texarkana, he has packages for various consignees, what does he do?

A. He delivers them to our agent.

Q. 47. What does your agent do?

A. He delivers them to the consignees.

Q. 48. Do you know anything which the railroad does in respect to the handling, delivering, taking care of, keeping safely the express matter in the baggage car as it is transported?

A. They do nothing towards taking care of our matter, except to transport it over their road in a car furnished by them.

Q. 49. How many tons of express freight of the Southern Express Company are usually carried in the express car of the St. Louis, Iron Mountain & Southern Railway Company?

A. I can only speak of what goes out of St. Louis, of course.

Q. 50. That is all you know?

A. That is all I know. Our runs over the Iron Mountain road now will average two to three tons, two tons say a day over various trains that run out from St. Louis.

Q. 51. How has it been during the last two months?

A. December averaged greater than that; say three and a half or four tons.

Q. 52. November?

A. Say three and a half or four tons in November.

Q. 53. October?

A. About the same; a fraction less, perhaps.

568 Q. 54. September last?

A. September last I have not estimated; I have not looked over that.

Q. 55. Can you give the general average from last June?

A. From last June, I would say, it would average, probably, about three tons, without having gone over the books and made an estimate, just an idea.

Q. 56. Will you state to the examiner if your messenger goes along with three tons of freight, express matter from St. Louis to Texarkana, how much of the service, which is done in respect of that, would be applicable to one ton?

A. I don't exactly understand your question.

Q. 57. The messenger goes down and carries three tons of freight; he renders service to three tons of freight; now how much of that service is bestowed upon one ton?

A. Of course, one-third.

Q. 58. How much is one-third of the full fare, which he pays as passenger? $16.90 you said was full fare.

A. Yes, sir.

Q. 59. One-third of that is how much?

A. $5.00 and about 60 cents.

Q. 60. Will you tell the examiner what you pay that messenger, what salary you pay that messenger per year?

Defendant objects, as immaterial.

A. We pay him $80 a month.

Q. 61. For taking care of your express matter upon the trains? A. Yes, sir.

Q. 62. How long does it take you to get through to take an express load of three tons from St. Louis down to Texarkana? What is the duration of one through trip, is the question?

A. About twenty-four hours; I don't know the exact time.

Q. 63. How many days is your messenger employed on one trip of express freight from St. Louis to Texarkana, including the time he is actually at work, and the time he is resting off the trip?

A. It takes him twenty-four hours to run from St. Louis to Texarkana, and he lays over there, say, twenty-four hours; he is resting twenty-four hours.

Q. 64. How long had he laid over before he left here?

569 A. About two days.

Q. 65. How many days of the pay for that express messenger are exhausted for one trip; is it three or four days?

A. Is the question for the trip down or the round trip, three days? It takes one day to go from here to Texarkana

Q. 66. The man is paid when he is asleep as well as when he is awake. You make an estimate of the round trip and the lay-over at both ends, and how much does the time amount to. When you have done that one-half will be for the trip down and the other half will be for the trip up?

A. The estimate is to include the lay off in St. Louis, the lay off at Texarkana, and the time that he is on duty; is that the idea?

Q. 67. Everything. Count the time from the time the messenger starts from your office here going South until he leaves your office going South the next time.

A. He is engaged five days.

Q. 68. What is that—on the round trip?

A. The round trip from the time he starts from St. Louis until he is ready to start again from St. Louis.

Q. 69. What is the amount of the messenger's salary during those five days?

A. Sixteen dollars for the five days. This is an estimate; it is not it exactly. It is that taking the days to be exactly five.

Q. 70. Now, Mr. Albright, will you please tell me what other accessorial service is performed by your company in respect to that ton of freight. You have given the accessorial here in St. Louis; you have given it on the train. Will you tell what the accessorial service is at the other end—say Texarkana or Little Rock, or wherever you stop; wherever the freight is destined to go? Can you estimate that for me?

A. I cannot, for I don't know the cost of such service there. We perform the same service; that is, we deliver the freight to the consignee, thereby performing accessorial service.

Q. 71. Whatever is necessary to be done. Can you state what it is that is necessary to be done at the other end, say Texarkana, Little Rock, or wherever it is you deliver the freight? A. Our agents receive it at the train from the messenger. The agent hauls it to his office, writes it up on his books, delivers it to the consignee, and takes the consignee's receipt for it, &c.

570 Q. 72. I want to know whether that costs more or less than it would at this end? A. I could not tell you, because I am not familiar with the cost of such service in those places.

Q. 73. Can you tell me whether the accessorial service performed by the express company in regard to a ton of freight collected in the city of St. Louis, and delivered in the baggage car of the railroad company for Little Rock or for Texarkana is more or less than the service which the railroad renders in the transporting of that freight?

Defendant objects, as leading, irrelevant, and incompetent.

A. The cost of the service?

Q. 74. Yes; which costs the most? A. Without having gone into any calculation I would say that the cost for accessorial service performed by the express company is more than the cost of transporting by the railroad company. I give that as my opinion.

Q. 75. Do you know what the cost of the transportation of a ton of freight from St. Louis, Missouri, to Texarkana is per ton per mile? A. I could not tell you exactly; I have made no calculation of it.

Q. 76. Mr. Albright, will you state to the examiner what took place sometime in June last in respect of the express freight which the Southern Expres Company offered to deliver to the St. Louis, Iron Mountain & Southern Railway Company at the Union Depot?

A. On the morning of June 2nd, 1880, we had our run of express matter checked out by the messenger going on both the Belmont and Texarkana trains, and carried to the car as usual; and after the Belmont messenger had gotten into the car a representative of the St. Louis, Iron Mountain & Southern Railway—Mr. Vary, I believe—came into the car. I was standing outside of the car, at the door, and he told me he wanted a scrip-list or tally of all express freight in the custody of the Southern Express Company then in the car. He was told he could get a scrip tally. Mr. Howard, the messenger in charge of the freight, was instructed to allow him to have that tally or scrip. Finding the Iron Mountain Railroad Company wanted to get a scrip tally of the freight, I went over to the office to assist in giving them a list-tally or scrip of the matter that was still in the office, that had not been sent over to the
571 Texarkana train. While in the office giving the list, Mr. R. C.
Kerens, connected with the Iron Mountain railroad, and I think Mr. Aikin, came in the office, and in conversation Mr. Kerens remarked that he intended to treat the Southern Express Company as any other shipper over the Iron Mountain railroad, and wanted to get a list of all freight matter being forwarded over the Iron Mountain road by the Southern Express Company. After that, and after I had gone to the car, I overheard Mr. Kerens——

Q. 77. Who is Mr. Kerens? A. Mr. Kerens is, I believe, general manager of St. Louis & Iron Mountain Express Department. I overheard Mr. Kerens instruct his messenger to take charge of everything in that express car, of the Iron Mountain railroad; to see that it was properly delivered and collected on; that being objected to by Mr. Agee, I think, about the collecting on it, and taking charge of what was in the custody of the Southern Express Company's messenger, Mr. Agee then offered to prepay for the transporting of the matter if necessary, and Mr. Kerens then seemed to be satisfied as to the payment. I don't remember now the balance of the conversation. The drift of it, to my mind, seemed that they wanted——

Defendant objects to the witness stating what seemed——

Witness: That is about all that I remember of what was said.

Q. 78. Is that all that transpired?

A. That is all I remember.

Plaintiff's counsel produces and shows to the witness a paper having this caption, "St. Louis, Iron Mountain & Southern Railroad Company, and Memphis & Little Rock Railroad Company, Express

Department; money and freight tariff from St. Louis, Mo.". Counsel hands said paper to the witness, and asks him what he knows about it, and to state where he got it?

A. That was given to me by Mr. C. H. Aikin, as a changed rate of the express department of the St. Louis, Iron Mountain & Southern Railway Department, November 23d, 1880.

Paper marked Exhibit 21 by the examiner.

Q. 79. Do you know whether the classification of rates on currency collections, gold and silver, less than $1,000, and the
572 classification for packages weighing less than one hundred pounds, which was issued, June 25th, 1880, by the express department of the St. Louis, Iron Mountain & Southern Railway Company was altered, at any time, by striking out of the same the eighth clause, which reads as follows:

"When sending or receiving more than one box of the same shipper or same consignee, to or from same point, on way bills of same date, which several boxes shall weigh each not less than 15 pounds, charge classification rate on the aggregate weight if less than 100 pounds, and the regular 100 pound rate if exceeding that weight."

If so, state what you know about it?

A. I called at the St. Louis, Iron Mountain & Southern Railway Express Department's office, on the 7th of December, and Mr. Aikin, superintendent—Mr. James Aikin—picked up his classification card, that is the same one, and told me that he would eliminate or abandon that clause from the classification, and took his pen and struck it out as you see there—that clause—and handed me the copy at my request.

Q. 80. And since that time the express department has acted upon it as non-existing, as if the eighth clause did not exist? A. So far as we are concerned they have.

Q. 81. What has been the method of charging you in regard to matter that was covered by that eighth clause after striking it out?

A. Well, they have charged us on the separate packages since.

Q. 82. That is, the clause as stricken out by Mr. Aikin has been abrogated in practice? A. In practice, yes, sir.

Plaintiff's counsel produces and shows to witness a paper marked Exhibit 22, and asks him to state who made it and what it is.

A. It is a paper made out by myself. This paper shows what the St. Louis, Iron Mountain & Southern Railway Company charged the Southern Express Company for matter transported over their lines at the dates named. It does not give all the articles, just a few of them to show the practice.

Q. 84. Will you state what the first column in Exhibit 22 shows?

A. The date of the shipment by the Southern Express Company over the Iron Mountain railroad.

573 Q. 85. What does the second column show?

A. The article.

Q. 86. What does the third show?

A. The weight of the article?

Q. 87. What does the fourth column show?

A. The consignee.

Q. 88. What does the fifth show? A. The destination.

Q. 89. What does the sixth show?

A. The amount charged by the St. Louis, Iron Mountain & Southern Railway Company to the Southern Express Company.

Q. 90. Column seven what does that show?

A. The amount charged the Southern Express Company on similar shipments, prior to November 6th, 1880.

Q. 91. What does the eighth column show?

A. The rate per ton per mile charged since November 6th, 1880.

Q. 92. The rate per ton according to what charge?

A. The charge made in column 6.

Q. 93. Through what period of time do these specimens of charges in Exhibit 22 run?

A. From December 13 to December 30, 1880.

Q. 94. Inclusive or exclusive? A. The items are inclusive.

Q. 95. Including those dates? A. Yes, sir.

Q. 96. Does the paper contain all the shipments which were made by the Southern Express Company over the St. Louis, Iron Mountain & Southern Railway between those dates?

A. By no means.

Q. 97. Do you know whether these charges made in column six for shipments by the Southern Express Company over the St. Louis, Iron Mountain & Southern Railway were paid by the Southern Express Company? A. I do.

Q. 98. Who paid them? A. I paid them myself.

Q. 99. At what dates?

A. Well, I make payments once a day, and it is often the case I pay next day for matter that went out the preceding day.

Q. 100. How late are your payments ever delayed?

A. The Iron Mountain people send in their bills daily except Sundays and holidays. They generally hold them over those days.

574 Q. 101. In two or three days payments are made?

A. Yes, sir.

Q. 102. Tell me what rate per ton per mile the Southern Express Company was charged for a safe that was shipped over the St. Louis, Iron Mountain & Southern Railway, December 13th, 1880? A. Sixty cents.

Q. 103. Sixty cents per ton per mile. The next article on December 13th?

A. One chair, 8 pounds, charged 60 cents; rate per ton per mile, 75 cents.

Q. 104. How long, Mr. Albright, had that rate of charging as indicated by this paper been in operation against the Southern Express Company by the St. Louis, Iron Mountain & Southern Railway previous to December 13th, 1880; how long had they been charging in that way?

A. Just about a month; I think they commenced to charge that way on the 12th of November.

Q. 105. Mr. Albright, are you acquainted with the rates for transporting freights by express from St. Louis to New York at the present time? A. I am.

Q. 106. What are the rates?

Defendant objects, as irrelevant and incompetent.

A. Three dollars per hundred pounds.

Q. 107. From St. Louis to New York?

A. From St. Louis to New York.

Q. 108. You may give the rate to Boston.

Defendant objects as before.

A. To Boston is also three dollars a hundred pounds.

Q. 109. Can you give the rates to Baltimore?

Defendant objects as before.

A. I can give the rates to Baltimore by one express company, which is $2.50 per 100 pounds.

Q. 110. What is that express company?

A. The Adams Express Company.

Q. 111. What express companies did you have in your mind when you said these are the charges for express matter per 100 pounds from St. Louis to New York, Boston, and Baltimore; what are the companies that carry on this business and that make these charges?

Defendant objects as before.

575 Q. The Adams Express Company's rates are those that I am most familiar with.

Defendant objects to this statement, as not responsive to the question.

Q. 112. What other companies are there that make those charges; do you know anything about the United States and the American?

A. I believe the American and the United States charge the same to New York.

Q. 113. Do you know what their rates are to Boston?

Defendant objects as before.

A. I do not, but believe them to be the same as the Adams.

Q. 114. How long, if you know, have these rates that you have named been the rates for transporting express matter from St. Louis to the points named; what time does it run back?

Defendant objects as before.

A. It is something over a year, perhaps, may be two years; I am not positive.

Q. 115. Can you tell me what is the express rate of the St. Louis, Iron Mountain & Southern Railway Express department, from Texarkana to New York *via* St. Louis?

A. I don't know, sir.

Q. 116. Do you know what is the common freight rate from Texarkana through Little Rock, and from St. Louis to New York?

Defendant objects.

A. I do not, sir.

Q. 117. Mr. Albright, do you know upon what terms the Adams Express Company is doing business over the St. Louis and San Francisco Railroad?

Defendant objects, as irrelevant and incompetent.

A. I do not.

Q. 118. Do you know, Mr. Albright, how the express business of the Southern Express Company is done over the St. Louis, Iron Mountain and Southern Railway?

Defendant objects on the ground that the witness has detailed it all minutely in his examination. 576

A. I only know what takes place in St. Louis; I am only agent in St. Louis; therefore cannot say what is done on the line of the road.

Q. 119. Then you don't know?

A. I know what the general practice of employees of the company is.

Mr. Thorouughman: That would not be satisfactory.

Q. 120. Do you know in what condition packages are received by the Southern Express Company for transportation; have you examined them and seen what their condition is; bundles that are brought to you, and can you tell what it is; when packages come into your office can you describe their condition?

A. We see that packages, when we recive them, are done up in shipping order; tied up, boxed up, sometimes sealed up.

Q. 121. When you receive a sealed package what do you do with it?

A. We receipt for it and forward it.

Q. 122. Do you open it and examine it before you forward it? A. We do not.

Q. 123. What amount of packages do you suppose coming into the control of the Southern Express Company for transportation are received sealed, and what proportion are received open, unsealed?

A. I could not give you hardly an idea; we ship money sealed; packages, freights, ordinarily are unsealed (with out stamp or wax) but wrapped up in paper, done up in shipping order; unless it is a watch, a valuable package, or a valuable paper, we don't require it to be sealed. Watches, diamonds, jewelry, things of that kind, we require to be sealed with wax.

Q. 124. What proportion of packages delivered to your company to be shipped or received by you sealed, so that you don't know the contents?

Defendant objects, as the question has been asked and answered.

A. That we don't know the contents?

Q. 125. I am asking you what is the proportion of those that come to your company, so sealed that you cannot know the contents; what is the amount of them; if there is one or two in a year, or a dozen, give me some idea of the quantity.

577 A. All of our packages you might say are brought to the office or picked up by our men already tied up, sealed or in condition for shipment. The contents are never exposed unless probably some women might bring a package to the office, and want it to be done up there for her. It is customary for packages to be done up and ready for shipment when received by us.

Cross-examination by Mr. THOROUGHMAN, counsel for defendant:

Cr.-Q. 1. In regard to this letter that was written by Mr. Fisher to Mr. Allen, and Mr. Allen's reply to it, I understand you that the original did not reach the hands of Mr. Fisher at all; did I understand you rightly? A. Yes, sir.

Cr.-Q. 2. How soon after you received the answer was it that Mr. Fisher saw the copy you speak of?

A. I made the copy, I think, next day, and forwarded it; my impression is I forwarded it to Nashville; I don't recollect distinctly when.

Cr.-Q. 3. If to Nashville it would likely reach him the next day? A. By the next evening.

Cr.-Q. 4. Have you not personal knowledge that he did get it as soon as you sent it to him? A. No, sir.

Cr.-Q. 5. The record, as it stands now, is blank as to whether he ever got anything but the copy, and a total blank as to when he got that; when did he get that; how soon after you sent him the copy did he get it? A. I cannot tell you.

Cr.-Q. 6. You don't know that he ever got it? A. No.

Cr.-Q. 7. Do you know that he ever saw Mr. Allen's reply to him at all? A. I cannot tell you, sir.

Cr.-Q. 8. You cannot? A. No, sir.

Cr.-Q. 9. You never heard him speak upon that subject?

A. I have received a communication from him on that subject.

Cr.-Q. 10. Did the communication you got inform you of the fact he had received the copy? A. It did not.

Cr.-Q. 11. Nor did it give you any information as to having any knowledge of Mr. Allen's answer to him?

A. No, sir; it was a telegram. I telegraphed the substance of Mr. Allen's letter in as few words as I could, and he replied, giving directions what to do with it.

578 Cr.-Q. 12. Treating it as a fact, he was in possession of it? A. Yes, sir.

Cr.-Q. 13. Your telegram was on the next day after you received the letter from Mr. Allen, was it? A. I think it was the next day; it was within a day or two, I know.

Cr.-Q. 14. So Mr. Fisher has known the substance of Mr. Allen's reply from the time, whenever it was, you sent him that dispatch? A. It was a very few words; as few words as possible.

Cr.-Q. 15. Who is Mr. Fisher, with regard to the Southern Express Company? A. Superintendent of one division, the western division, of the Southern Express Company.

Cr.-Q. 16. The next subject upon which you spoke, that I think we care anything about, was the subject of the property used in the city of St. Louis by your company in gathering up packages of the public and carrying them to your office, and thence to the depot. Will you tell the examiner what that property consists of? What you own; not what you hire? What the Southern Express Company owns of wagons, horses, harness, &c., that you spoke of; what you have got here of your own? A. We have no wagons here of our own.

Cr.-Q. 17. What have you in the way of horses of your own? A. We have no horses of our own.

Cr.-Q. 18. What have you in the way of harness? A. We have no harness of our own.

Cr.-Q. 19. Under what State law, if you know, was the Southern Express Company organized; is it a creation of this State or some other State? A. It is the creation of another State; I think Georgia.

Cr.-Q. 20. You made a statement, as I understood you, that the cost to collect and deliver a ton of freight at the depot was $15.20?

A. I based that on the calculation I made.

Cr.-Q. 21. Now will you tell the examiner whether that is a theory of yours, from the data you gave to Mr. Glover, or whether it is the actual experience of your own life in business?

A. It is a theory.

Cr.-Q. 22. Which might vary some from a- actual application, might it not? A. Yes, sir.

Cr.-Q. 23. I must have misunderstood you in this regard as must
Col. Brodhead have misunderstood you in the statement,
579 that it was worth more to gather up this ton of freight than
it would be to carry it on the railroad from here to Texarkana or Little Rock, or did you say that?

A. My recollection is I answered a question, whether it costs more; that it cost an express company more to gather up a ton of freight in a large city like St. Louis and deliver it at the depot, than it would cost the railroad company to transport that ton from here to Texarkana.

Cr.-Q. 24. Then, we did not misunderstand you; now, then, will you tell the examiner what experience you have had in the operation of railroads?

A. No experience in the operation of railroads, except observation.

Cr.-Q. 25. State right there your age?

A. I am 34 years old.

Cr-Q. 26. You have had no experience upon railroads, except mere observation?

A. Observation.

Cr.-Q. 27. You never ran on a railroad?

A. Only as messenger.

Cr.-Q. 28. You were running in the interest of an express company then?

A. Of an express company.

Cr.-Q. 27. You never were in the railroad service in any connection?

A. Not as an employee.

Cr.-Q. 30. You never performed any office, then, in connection with the operation of a railroad? A. No.

Cr.-Q. 31. Will you tell the examiner how it is, having no experience upon a railroad, and only observing as an express messenger, how you are able to tell the relative value or the relative cost of this service you have spoken of, gathering up goods and carrying them a distance of about 500 miles on a railroad; tell us how you came to that conclusion?

A. I don't think that the cost to a railroad company amounts to a great deal, for a small space in their baggage car, say one-third of a baggage car, that they run anyway to carry their baggage, and I know it does cost an express company to gather up this matter.

Cr.-Q. 32. Something, and considerable.

580 Counsel for the plaintiff objects to the witness being asked whether he can answer by his own experience a question like that when it is notorious that a railroad company reports its own cost for transporting a ton of freight per mile, at 1.88 cents.

Counsel for the defendant objects to the remarks of the gentleman, because they are calculated to put in possession of the witness a matter that will destroy his cross-examination.

Cr.-Q. 33. I will get you to state if you ever examined the reports of the Iron Mountain Railway Company, to see what it does cost them to carry a ton of freight per mile yourself; and, if so, when did you do it?

A. I think I saw, some time ago, a report of the St. Louis, Iron Mountain & Southern Railroad Company; my recollection is the figures set down were 1.91, a fraction less than two cents per ton per mile; that is my recollection.

Cr.-Q. 34. When was it you saw that?

A. I think it was within a month.

Cr.-Q. 35. Where did you see it?

A. I saw it in our office.

Cr.-Q. 36. What was it in?

A. In an annual report, I think, or some report that the Iron Mountain railroad made to the stockholders.

Cr.-Q. 37. What year was it for?

A. I am not certain; I think 1879.

Cr.-Q. 38. Who was it signed by?

A. I didn't notice any signature to it.

Cr.-Q. 39. To whom was the report addressed?

A. I didn't notice particularly to whom it was addressed.

Cr.-Q. Was it for common freight or express freight?

A. It was for common freight, I think.

Cr.-Q. 41. Will you state to the examiner whether you have any definite recollection about having seen that report at all?

A. Yes; I think I saw it.

Cr.-Q. 42. Who gave it to you?

A. I saw it in the possession of Sup't Fisher.

Cr.-Q. 43. Was it in print or manuscript? A. Print.

Cr.-Q. 44. Why didn't you give me the fact that you based your information upon that before I asked you; I mean before it was suggested that report had been put forth?

581 A. I don't know, sir, why it was not given; I suppose I did not think of it at the time.

Cr.-Q. 45. You state to gather up this express matter that you hired teams, I believe, didn't you?

A. No, I did not state that.

Cr.-Q. 46. Now, how is that fact? A. I say if we had hired.

Cr.-Q. 47. You say you do not own any wagons, teams, or harness; how do you gather it up unless your hire it done?

A. By an arrangement with another express company in St. Louis.

Cr.-Q. 48. Don't you call that hiring?

A. You might call it hiring, I suppose.

Cr.-Q. 49. You state, I believe, that it is worth $15.20 to gather up a ton of freight, and you also state that you did not go further west than Jefferson ave. in this city, but were not able to tell Mr. Glover how far south and how far north you went. You said you would inform him. Have you now got that information?

A. I must apologize for that; I forgot it. I have not got it yet.

Cr.-Q. 50. You have spoken a good deal in your examination about the operation of other express companies than your own running east from here. How long have you been in the express business?

A. I have been in the business 10 years; occupying the positions of clerk, messenger, and agent; I have had the experience that such positions have given me.

Cr.-Q. 51. You are pretty familiar with the express business, I suppose.

A. I have had the experience that such positions would give me.

Cr.-Q. 52. You say it costs you $15.20 to gather up this ton of freight from the public and put it on the railroad cars. Now, is it worth about as much to take it off as to put it on and deliver it at the various places of destination?

A. Well, I don't know as to the cost.

Cr.-Q. 53. I say the service is worth as much to you to distribute it to the same extent as to gather it up?

A. I think so, based on the same calculation.

582 Cr.-Q. 54. Fifteen dollars and twenty cents a ton is a little over 75 cents a hundred, is it not? A. I have not calculated.

Cr.-Q. 55. It is little over 75 cents a hundred, I reckon; that would make for gathering it up and distributing the value of $1.50 a hundred, would it not, if it would cost about as much to put it on as off? A. Yes, sir.

Cr.-Q. 56. Thirty dollars and forty cents a ton for your service! What do you get from the public for that ton of freight thus carried?

Counsel for plaintiff objects, on the ground that it is not competent for defendant to claim part of plaintiff's compensation; there is no partnership existing between the Iron Mountain Railway Company and the Southern Express Company. The Southern Express Company pays the railroad what is reasonable for their compensation for carrying the freight. The defendant is not entitled to plaintiff's compensation.

A. I cannot tell you.
Cr.-Q. 57. Can't you approximate it?
A. No; I have not made any calculations.
Cr.-Q. 58. Will you do that and furnish it to us?
A. I have not the basis for making that calculation; my position don't give me the information necessary for making the calculation.
Cr.-Q. 59. Is it not in your office? A. No.
Cr.-Q. 60. Don't you keep a freight tariff?
A. We keep the freight tariff.
Cr.-Q. 61. Would not that enable you of itself to make an approxmately accurate list, so that you could answer the question? A. At given places I could.
Cr.-Q. 62. Will you prepare that and furnish it to us at our next meeting?
A. It will involve a good deal of labor.

Counsel for plaintiff objects to the question, and advises the witness not to answer.

WITNESS: I decline to answer the question under the advice of counsel.

Cr.-Q. 63. You stated in your examination-in-chief that this ton of freight which the gathering up of was worth $15.20, consisting of packages, say, for instance, 20 packages of three pounds each, 34 packages of 10 pounds each, 10 packages of 15 pounds each,
583 20 of 30 pounds each, 8 of 50 pounds each, 3 of 150 pounds each was worth the sum I have named, $15.20; you have also answered me it would be worth as much to distribute it, to wit, $15.20; now, can you not from the data I have just given you tell us what the express company would receive from the public for the entire care and service bestowed upon that ton of property by referring to your various freight lists and tariff rates, and by referring also to your experience of 10 years as an express man, to take that ton of freight, say, from St. Louis to De Soto?
A. I can make it up at a given point.
Cr.-Q. 64. Could you to that point named, De Soto?
A. I can, sir.
Cr.-Q. 65. Will you do that and furnish it to us at our next meeting?

Plaintiff objects, as incompetent and irrelevant.

Cr.-Q. 66. Will you furnish that information at our next meeting? A. To De Soto?

Cr.-Q. 67. Yes. A. I can calculate it.

Cr.-Q. 68. And tell us what your company receives from the public for that ton of freight, or can you do so now? A. I can do it in a few minutes, I suppose. Our tariff is just the same as the tariff of the St. Louis, Iron Mountain and Southern Railway Express Department, except as to the conditions.

Mr. **Glover**: You mean the amounts are the same? A. Yes, the figures are the same. (Witness makes a calculation.)

Mr. **Thoroughman**: Have you got it ready? A. Yes, sir.

Cr.-Q. 69. What is it, if you are able to answer? A. I calculate here it makes $26.45 to De Soto, taking this schedule of the Iron Mountain railroad tariff list, which is the same as our own.

Cr.-Q. 70. So that a ton of freight from St. Louis to De Soto being worth $30.40, for the accessorial service performed at either end, of the transportation, there is a loss of how much? A. I don't say there is a loss.

Cr.-Q. 71. Tell me what would be the difference in figures? A. I make it $3.95.

Mr. **Glover**: Make what $3.95?

Mr. **Thoroughman**: The difference between what the freight rates are, and what he think- it is worth to carry this freight to De Soto, and distribute it—to gather it up and distribute it.

584 Cr.-Q. 72. Could you tell us, taking the same number of packages, comprising the ton of freight, what your profits would be, what you would make in gathering up and distributing that ton of freight at Little Rock, Arkansas?

Counsel for plaintiff objects, as before.

Cr.-Q. 73. Explain what that difference of $3.00 and some odd cents is. Whether that is a loss or not.

A. My calculation was based on a rate of charges as if we had hired it done, at a rate made by a city express in the city of St. Louis; therefore, I could not say that was a loss, or that there would be an actual loss in the transaction, because I don't know the cost of this accessorial service at De Soto.

Cr.-Q. 74. Now suppose, Mr. Albright, you carried that same ton of freight on to Little Rock, can you tell us what you would receive for the services from the public?

Counsel for the plaintiff objects to the witness making these calculations for defendant as a witness, and says that it will take up interminable time.

A. Our rate to Little Rock is $1.75 per hundred pounds.

Cr.-Q. 75. And the same with the Iron Mountain?

A. The same as the Iron Mountain Express Department.

Cr.-Q. 76. That is the rate you receive from the public?

A. That is the rate per hundred pounds. When it is less than that in weight we receive a classified rate.

Cr.-Q. 77. I will get you to state if you conform in every instance of service to the public to your tariff rates?

A. Well, the tariffs are furnished and made by the superintendent of our company, and without his permission a departure from them is not made.

Cr.-Q. 78. Does he permit you to depart from them?

A. Sometimes.

Cr.-Q. 79. In some cases? A. Yes, sir.

Cr.-Q. 80. Can you give us an instance or a specimen of a case in which you have departed?

Plaintiff objects, as irrelevant.

A. I don't remember just now any special case.

Cr.-Q. 81. You do sometimes depart from them with his permission? A. With his permission.

Cr.-Q. 82. You cannot give me an instance of such departure?

585 A. Not any particular instance at any particular time.

Cr.-Q. 83. I am not asking for the particular time or a particular instance. Give the species of property.

A. I can give you an illustration.

Cr.-Q. 84. That will do.

A. Our rate to New Orleans on dressed poultry is $3.00 per hundred pounds; that is our regular rates, but by permission of the superintendent we made it $2.50; that was a departure from our regular rate.

Cr.-Q. 85. Can you give us another illustration of departure from your tariff?

A. Yes, take Mobile, for instance; our regular poultry rate to Mobile was $2.75; by permission of the superintendent we made it $2.50; that was a departure from the regular rate.

Cr.-Q. 86. Could you give us another illustration of a departure?

A. None occurs to my mind just now.

Cr.-Q. 87. Do you make any difference in green fruits?

A. Yes, sir; we have what we call a fruit rate.

Cr.-Q. 88. Don't you vary from that sometimes, owing to the condition of the property when you find it ready for shipment?

A. Sometimes.

Cr.-Q. 89. You stated that you pay $16.90 for your messengers, as I understood it; for what length of time is that paid; is it for a trip?

A. For one trip through from St. Louis to Texarkana.

Cr.-Q. 90. You pay $16.90 that way and $16.90 back?

A. Yes, sir.

Cr.-Q. 91. You pay that by means of 1,000 mile tickets in the case of Missouri, and 1,500 mile tickets in the case of Arkansas?

A. Yes, sir.

Cr.-Q. 92. You stated that was full fare, I believe?

A. My idea that it is full fare is from this fact that those tickets are sold to the public; it is a regular fare.

Cr.-Q. 93. They are not sold to the public generally are they?

A. Any one that wants them can go and buy them.

Cr.-Q. 94. Is that what you understand? A. Yes, sir.

Cr.-Q. 95. I will get you to state if this is not true; refresh your memory and see if you do not remember that the tickets you have spoken of are not made for the public generally at all, but are made
for those people who constantly patronize the road?

586 A. Anybody can go and buy them that wants them.

Cr.-Q. 96. Is it not true within your information that these tickets of 1,000 miles in Missouri and 1,500 miles in Arkansas are made expressly, not for the public, but for the people who constantly patronize the road, such as cattle buyers, wheat buyers, expressmen, and shippers of lumber? And that the public cannot go there and buy them indiscriminately?

A. I have not so understood it; I have understood that anybody can go and buy them that wants them.

Cr.-Q. 97. Then, what you mean by saying it is the full rate is, that, as you understand it, it is the usual rate that those tickets, whatever they may be, are sold at?

A. Yes, sir; that is the idea.

Cr.-Q. 98. You stated that you pay your messengers $80 a month, is that your uniform price?

A. That is the salary for messengers between here and Texarkana.

Cr.-Q. 99. What do you pay the others?

A. We pay the others $70 between here and Belmont and Columbus, Kentucky.

Cr.-Q. 100. You pay the rest $70 and those who have to go to Texarkana get $80 per month?

A. They are paid $80.

Cr.-Q. 101. You have given in all these illustrations you have given to Mr. Glover the highest expenses you are put at?

A. Let me understand the question.

Cr.-Q. 102. I mean to say this, in regard to the schedule you have given your list in regard to safes, in regard to the chair you have named, all those other matters, they are the highest rates that have been exacted in all cases by the Iron Mountain railroad?

A. They are as high.

Cr.-Q. 103. Are they not absolutely the highest?

A. No; because there are other instances of the same sort.

Cr.-Q. 104. If the same sort these are the highest, equally as high as the others?

A. Equally as high as the others.

Cr.-Q. 105. You impressed my mind with the idea that your messengers were somewhat restricted by the Iron Mountain in the transaction of their business; you may not have intended that; is that the fact?

A. The present fact, as far as I know is, that they are not restricted
in the conduct of their business individually.

587 Cr. Q. 106. They are certainly not collectively?

A. I mean by that that their personal liberty is not restrained.

Cr.-Q 107. Is their business restrained in any way?

A. No; I could not say it was; I have not traveled up and down the railway so as to say, of my own knowledge, what they do, and whether they are restrained while on the road.

Cr.-Q. 108. You do not intend to make the impression they were denied any right they were entitled to?

A. No; I didn't intend that.

Cr.-Q. 109. What significance do you attach in your mind to the fact that the Iron Mountain Railroad Company does not furnish chairs to your messengers to sit upon?

A. The Iron Mountain Railroad Company charges us for that chair as they do for shipments of freight. They charge us for the transportation of that chair as they charge us for other similar shipments.

Cr.-Q. 110. For other matter occupying space in the car?

A. Occupying space in the car.

Cr.-Q. 111. Then your messenger does have a chair, and you are charged for it?

A. We pay for it when they have it.

Cr.-Q. 112. Do you furnish it to them and then pay for it?

A. We pay for its transportation.

Cr.-Q. 113. Who owns the property in the chair you thus pay upon?

A. The messenger owns his own chair.

Cr.-Q. 114. But the express company pays transportation upon it?
A. Yes, sir.

Cr.-Q. 115. The express messenger goes where he chooses on the train, does he not; he is a passenger; if he chose to go and ride in a passenger car with that 1,000 mile ticket, he could do so, could he not? A. I presume so.

Cr.-Q. 116. And have a seat in there? A. I presume so.

Cr.-Q. 117. Don't you know that it is impracticable where there is an extensive express business being transacted to have a chair in the car? A. They are used.

Cr.-Q. 118. They are used? A. Yes; in the car.

Cr.-Q. 119. Are you familiar with the way Southern Express
588 messengers do their business from St. Louis to the East, in
reference to chairs? A. Going East?

Cr.-Q. 120. Yes.

A. We have no messengers running East.

Cr.-Q. 121. Are you familiar with the way those express companies who do business there do in reference to chairs; whether they have chairs or not?

A. Some have chairs running out of St. Louis.

Cr. Q. 122. Don't you know some of them have not?

A. No; I do not know that.

Cr.-Q. 123. Don't you know some railroad companies don't allow them to take even a camp-stool in the express car?

A. No; I don't know that.

Cr.-Q. 124. Would not a chair occupy as much space, or nearly so, in a car as an ordinary traveling trunk?

A. Yes, it would, if you place it in one position.

Cr.-Q. 125. Your messenger performs all the handling of your freight? A. It is his duty to perform that.

Cr.-Q. 126. Is there any reason in your mind why the messenger sent out by the Iron Mountain railroad express department could not handle all their freight, as well as yours, on the Iron Mountain road, say between here and Texarkana?

A. It is not in his custody.

Cr.-Q. 127. If it was, is there any reason he could not handle that as safely and as well as your messenger?

A. I don't know that I could answer that question.

Cr.-Q. 128. I mean to say, is there more business done between here and Texarkana than one active business agent could transact; that is, express business? A. No, sir.

Cr.-Q. 129. You did it until the Iron Mountain railroad, a year ago, put on a messenger? A. Yes, sir.

Cr.-Q. 130. Your one man was able to transact the business on that train; now, is there any reason why the agent of the Iron Mountain Railroad Company's express department could not do it as well as your man did it before the Iron Mountain Railroad Company put a messenger on the train?

A. It is not in his custody.

Cr.-Q. 131. If it was, could not he?

A. If he was a competent man, I presume he could.

Cr.-Q. 132. You could go and do it all, could you not, if it was all in your hands? A. I think so.

589 Cr.-Q. 133. Then if the Southern Express Company were to turn over its express matter to the Iron Mountain express department to carry its express it would save the expense of a messenger itself, wouldn't it; of course it would save the extra chair in the car, wouldn't it? It would save $80 a month you pay for the services of that man; isn't that all true?

A. Certainly, if the messenger is taken out of the car we wouldn't pay any passenger fare on him, and he wouldn't sit on a chair in the car. And if the chair is out it is out.

Cr.-Q. 134. Then you have stated already you don't know the reason why one man could not transact all the express business on that line, I believe?

A. I don't know that I stated it in so many words.

Cr.-Q. 135. What will you state about it?

A. A competent man could take care of the express business that is done over the Iron Mountain road.

Cr.-Q. 136. Don't you sometimes send out freight on that line, express freight, without a messenger being with it at all?

A. I don't remember of an instance.

Cr.-Q. 137. Have you not now, upon reflection, in a great many instances, sent out express freight over that road without any messenger with it at all, or in charge of it?

A. I don't remember an instance.

Cr.-Q. 138. Might such a thing have occurred without your knowledge?

A. I think not; not since I have been in St. Louis.

Cr.-Q. 139. Was it done before you came to St. Louis?

A. I don't know.

Cr.-Q. 140. When you were at Memphis, how did you do there?

A. It was our customs and practice to always send a messenger with our freight.

Cr.-Q. 141. I am not asking the custom; didn't you sometimes send out express freight without sending a messenger with it. A. I cannot recall an instance.

Cr.-Q. 142. What was that you said you overheard Mr. Kerens remark concerning the transaction with Mr. Vary; when Mr. Vary and Mr. Aiken were down there at the Union depot?

590 A. I overheard him give instruction to the messenger in charge of the St. Louis, Iron Mountain & Southern express department that he was to take charge of the car, and all its contents; to see that it was properly put out of the car, properly delivered; that he was in entire charge of the car.

Cr.-Q. 143. He told his own messenger he was in entire charge of the car, and all matters in it?

A. All matters in it.

Cr.-Q. 144. You overheard him say that?

A. That is my recollection.

Cr.-Q. 145. He said that to your agents?

A. That was his instruction to his messenger.

Cr.-Q. 146. Who was the messenger; what was his name?

A. I don't remember his name; they were all new men to me.

Cr.-Q. 147. Was that before or after the hearing before Judge Treat, if you know when that was, on the motion to modify the injunction in this cause?

A. That was before.

Cr.-Q. 148. It was before that?

A. Yes, sir.

Cr.-Q. 149. You made an affidavit in that hearing, didn't you?

A. Yes, sir.

Cr.-Q. 150. Did you state anything about this conversation of Mr. Kerens with the messenger in that affidavit?

A. I think not. I think it was not embodied in any affidavit I made.

Cr.-Q. 151. What special importance or significance is there in your mind to-day attached to that remark of Mr. Kerens to the messenger which you overheard?

Plaintiff objects as immaterial, and on the ground that the testimony is to be judged by the court.

Cr.-Q. 152. I want to know whether Mr. Kerens was trying to conceal from you what he was saying to the messenger?

A. No, I think not; I didn't have an idea of that sort.

Cr.-Q. 153. How came you to say you overheard the remark? A. I walked into the car and Mr. Kerens and Mr. Agee, and, I think, Mr. Dudley, who is connected with your road, were all conversing together; I was not a party to the conversation; I just walked into the car and was standing near.

Cr.-Q. 154. You were not a participant in the talk? A. No.

591 Cr.-Q. 155. This was before the hearing in November last? A. Yes, sir.

Cr.-Q. 156. You told Mr. Glover something concerning the per cent. that was paid to Eastern roads by express companies, didn't you? What was that per cent.? A. I don't think I answered any question of that sort.

Cr.-Q. 157. The charges that were made by express companies to carry goods from here to the East? A. Yes, sir.

Cr.-Q. 158. Did that answer of yours relate to what charges were made by express companies, or by railroad companies against express companies? A. My recollection is it was what charges were made by express companies.

Cr.-Q. 159. You did not speak on the subject as to what railroad companies charge express companies? A. No, sir.

Cr.-Q. 160. What do you know upon the subject of express companies, the Adams, I believe it is, and the American and the United States; do you know that they are operating under contracts made between themselves and various railroad companies over those lines they carry express freight?

A. I don't know.

Cr.-Q. 161. You do not know? A. No, sir.

Cr.-Q. 162. What information have you, if any, upon the subject of the exclusive right to run over any given territory of the United States by any of the express companies in this country?

Plaintiff objects, as irrelevant and immaterial.

A. I don't know of my own knowledge.

Cr.-163. What information have you, and what knowledge have you upon the subject that the Southern Express Company has a contract with other companies that they are not to come within its territories? A. I don't know of my own knowledge.

Cr.-Q. 164. Do you know it from any talk you ever had with Mr. Fisher on that subject?

Plaintiff objects, as incompetent, as calling for hearsay.

A. Hearsay is all I know of.

Cr.-Q. 165. What are your rates of charges for carrying money for the public—say, for instance, from St. Louis to Texarkana?

A. I am not certain what our rates on money from here to Texarkana are.

592 Cr.-Q. 166. Could you furnish it at another time? A. I can give it to you.

Cr.-Q. 167. Will you do that?

A. Yes, sir; I can do it at any time. How shall I convey it to you?

Cr.-Q. 168. Bring it with you. I will ask you if you will also give us your tariff for other valuables, such as valuable jewels, valuable looking-glasses, valuable show-cases, valuable musical instruments, and things of like character; will you furnish me that also?

A. I will have to send to Memphis for a copy of our tariff—general tariff.

Cr.-Q. 169. That is what I mean. Get it for us, will you? I want to ask you, if you please, with reference to this, whether in carrying money you take into consideration at all, in making you- charges for its transportation, the value of the money?

A. Yes, sir.

Cr.-Q. 170. How is it in reference to a diamond?

A. If it is valued, we charge according to its value.

Cr.-Q. 171. You never had the conception of charging for a diamond by its weight, had you; simply its weight?

A. It is often the case that—I think I can say it of my own knowledge—that shippers ship diamonds, jewelry, and valuables without giving any value; therefore we charge on them the package rate when we don't know the value.

Cr.-Q. 172. Charge the package rate when you don't know the value? A. When we don't know the value.

Cr.-Q. 173. That is where the consignor himself brings to you a sealed package fixing his own value upon it, then you charge your regular package rate?

A. According to the value, if it is over a certain amount; if he fixes the value over a certain amount, we charge according to the value and package rate added.

Cr.-Q. 174. What is your course of business where he brings you a package without discloseing its contents and fixing no value upon it.

A. We ask him the value; if he declines to give it, we mark his receipt, "value asked and not given," and charge him the *the* package rate.

593 Cr.-Q. 175. Just simply charge him the package rate?

A. Yes.

Cr.-Q. 176. That is your invariable rule?

A. That is our custom.

Cr.-Q. 177. So that if a man comes to you with a thousad dollars in an envelope, declining to give you the value of the contents of the envelope, you state that fact upon the back of the envelope and then ship it as a single package, do you?

A. It is very seldom the case a man brings a package——

Cr.-Q. 178. I ask you in case you do receive it?

A. I don't know that I ever saw a case of that sort where a man brought us a package of a thousand dollars and told us it had no value.

Cr.-Q. 179. I am stating it, not as an actual occurrence, but as an illustration, that is all.

A. Take a diamond, if he brought it as a package of freight, and he didn't state any value, we would charge him the package rate.

Cr.-Q. 180. If he puts a diamond worth $5,000 into a package, and he chooses to refuse to give the value, you just simply mark on the back of the package that he declined to give its value, and send it forward, charging how much?

A. We stamp or write on the face of the receipt, "value asked and not given," and forward it, charging our regular package rate.

Cr.-Q. 181. What would your package rate be upon a case of that sort? It would be a very small package, a few ounces?

A. To what given point?

Cr.-Q. 182. Say from St. Louis to Texarkana or Little Rock, suppose it is a package containing a diamond ring, done up in a small paper box, weighing less than a pound, and he refused to give the value, what would your charge be upon it?

A. Charge him 15 cents.

Cr.-Q. 183. If the same weight were presented you, and he told you the ring was worth $5,000, what would you charge him?

A. I would charge him for the package and one-eighth of one per cent. on the value.

Cr.-Q. 184. That would be twelve and a half cents on the one hundred dollars?

594 A. One dollar and twenty-five cents on a thousand; five thousand would be $6.25.

Cr.-Q. 185. The first step in the computation of your charge would be 15 cents for the package? A. Yes, sir.

Cr.-Q. 186. Then you would add to that one-eighth of one per cent., making—— WITNESS: Six dollars and twenty-five cents more; making $6.40.

Cr.-Q. 187. What would be your practice or your conduct, if you knew a diamond ring was in there and the consignor refused to tell you whether it was or not; what would you do? A. I don't know that I have ever been placed in a position of that kind.

Cr.-Q. 188. What would you do if you were placed in those circumstances? A. I never have made up my mind what I would do.

Cr.-Q. 189. You never had an occurrence of the sort? A. No.

Cr.-Q. 190. And you don't want to speak about it without actual experience?

A. I have not made up my mind what I would do in the matter.

Cr.-Q. 191. Have you no directions from the general superintendent in cases of that sort? A. I cannot recall any just now.

Cr.-Q. 192. So, in no phase of the case of a diamond being shipped would you take into consideration the weight of the matter at all would you, the weight of a diamond, the weight of the package? A. You described a package that would weigh a pound or less; I base the 15 cent rate on that.

Cr.-Q. 193. I mean in these given circumstances you would not take into consideration the weight of the article at all?

A. It would come under a certain weight and our classification is based on the weight.

Cr.-Q. 194. Do you know anything about the Pacific Express and its manner of doing business in this city?

A. No, I cannot say that I do.

Cr.-Q. 195. You do not? A. No.

Cr.-Q. 196. I want to ask you now, if you have any information on this subject, that the Pacific Express goes around this city with its own wagons, gathers up express matter, carries to St. Charles,

and there distributes it just exactly as you gather up and dis-
595 tribute express matter; for all of which gathering up, carry-
ing it to St. Charles and distributing it, they charge 30 cents a hundred? A. I don't know that I will modify my answer; there is an express company in St. Louis known as the Pacific, and they have their wagons on the street; that is the extent of my knowlege of the manner of the conducting of their business.

Cr.-Q. 197. Do not people sometimes bring express packages to your office? A. Yes, sir.

Cr.-Q. 198. People bring things there to the office and get receipts in the office? A. Yes, sir.

Cr.-Q. 199. In other cases merchants hang out cards and you send your wagons? A. Yes, sir.

Cr.-Q. 200. Do the public ever carry anything from the depot to the train and give it to you?

A. I have known of such cases.

At this point the further examination of this witness and the taking of testimony in this cause was postponed until 10 a. m. tomorrow, January 8, 1881.

St. Louis, Mo., *January* 8, 1881.

The parties met pursuant to adjournment, and the taking of testimony was resumed as follows:

Cross-examination of C. H. Albright continued:

The witness said: Yesterday in my statement as to what we paid a messenger for a round trip to Taxarkana, between Taxarkana and St. Louis, I stated that it cost $16; in the hurry of making the calculation I used some wrong figures, and find the correct amount is $13.33.

Cr.-Q. 201. Mr. Thoroughman: You have known of merchants carrying things to the depot to put upon the express car in your charge, to ship it by you?

A. Yes, sir; I have known cases.

Cr.-Q. 202. Do they not frequently bring packages to your office? A. Yes, sir; frequently.

Cr.-Q. 203. What deduction do you make to them for bringing them to your office? A. Deduction on the charges?

Cr.-Q. 204. Yes. A. None at all.

Cr.-Q. 205. What difference do you make in your tariff rates whether a man brings his own packages to you or you send out within your limits and get it from him and send it to the train?

A. We make no difference.

596 Cr.-Q. 206. Did you ever know in your ten years' expe-
rience in the express business of any charge being made for any such service as that at all—going out and gathering up packages?

A. By whom?

Cr.-Q. 207. By express companies or anybody else?

A. I have known what we call outside express companies.

Cr.-Q. 208. I mean regular express companies that carry express matter through the country, not through the city?

A. I cannot recall an instance.

Cr.-Q. 209. Now, whilst upon this subject, I have turned forward in my memorandum a little to keep the connection as near as I can —I want to ask you this question, in respect to the rate charged on packages of money. Suppose I bring to your office a package with Col. Broadhead's name on it to be sent to Little Rock and one with my name, also addressed to the same place, do you take them as one or separate packages in your express business? A. You mean the charges?

Cr.-Q. 210. Yes, and as to the package itself.

A. We take them as separate packages, and charge on them as separate packages.

Cr.-Q. 211. Why do you not, where they are brought to your office for the same person and going to the same destination, receive them and charge on them as one package?

A. It is not our rule.

Cr.-Q. 212. Is not the rule, so far as you know in that case universal, that those packages are charged upon separately, by all express companies? A. I do not know.

Cr.-Q. 213. Now, suppose I take to your office two of my own packages, one to go to Brown and the other to Smith, at Little Rock, would they be charged for separately or as one package. A. Separately.

Cr.-Q. 214. Now, would that be the case universally with reference to money, bills of exchange, promissory notes, deeds of trust, or things of that sort being received by you?

A. Yes, sir, the same.

Cr.-Q. 215. The same rule is applicable to all matter carried by the company? A. Yes, sir.

Cr.-Q. 216. Which is the highest, the tariff rate now enforced by the Iron Mountain Railroad Company, or your tariff that was enforced by you just before the bringing of this suit.

597 A. The Iron Mountain Railroad Company's freight tariff or express tariff?

Cr.-Q. 217. The express tariff is what I mean.

A. I believe in some cases it is less.

Cr.-Q. 218. In some cases it is less? A. Yes, sir.

Cr.-Q. 219. You mean the Iron Mountain railroad tariff is less in some cases?

A. The Iron Mountain railroad express tariff to some places is less than our rate prior to bringing the suit.

Cr.-Q. 220. Does not the tariff now enforced by the Iron Mountain railroad lessen the average of what you used to charge just before you brought this suit; is not the average smaller than the public pays?

A. I believe it is some little smaller.

Cr.-Q. 221. Can you furnish us the difference that exists between the tariff enforced before the suit and the tariff now enforced by the Iron Mountain railroad express department?

A. I don't know whether I could get it up, because those tariffs are out of use; I don't know whether I have them or not.

Cr.-Q. 222. Will you tell us the manner of business between yourselves and the Iron Mountain Railroad Company before they started an express department at all? I mean specifically to get your mind on this subject as to your shipments, your time of settlement, and your report of weights, &c. A. I can only tell you as to the manner of our placing goods on the car, as to the weight reported to the Iron Mountain Railroad Company; I do not know anything about that; as to the dates of settlement, I don't know anything about that prior to bringing the suit.

Cr.-Q. 223. Can you tell us whether or not all express freight that was shipped by your company over the Iron Mountain railroad was properly reported and paid for? A. Prior to bringing the suit?

Cr.-Q. 224. Prior to the suit. A. I know nothing about that; I am not in a position to know those things, and was not at that time.

Cr.-Q. 225. Can you answer the converse of the proposition that you did not pay for matters that were not reported; you paid on nothing unless it was reported, did you? A. I know nothing about that question, because it is out of my knowledge.

598 Cr.-Q. 226. I will ask you what accessorial service generally is performed by express companies in gathering up money packages; in other words, how does money usually come to your office? A. Money is usually brought to our office by the shippers themselves.

Cr.-Q. 227. By the owners or shippers?

A. Yes, sir; it is sometimes the case that when a man has silver or something of that kind, we send out a wagon for it.

Cr.-Q. 228. How is it with reference to valuable jewelry generally; is it generally brought to the office or do you go and hunt it up?

A. It is sometimes brought to the office; sometimes the packages are called for by our men.

Cr.-Q. 229. How is it with reference to promissory notes, bills of exchange, deeds of trust, and things of that sort; do you generally go and get them, or are they generally brought to your office?

A. They are generally brought to our office.

Cr.-Q. 230. Did you ever know—you have answered it positively before, but I want the record in this form—did you ever know, in your experience as an express man, an instance where there was any allowance made to the consignor or shipper for his bringing in of property last named to your office; any rebate given to him at all? A. For that service?

Cr.-Q. 231. Yes. A. I don't remember an instance.

Cr.-Q. 232. On yesterday you spoke as to the expense of transporting express matter from St. Louis to New York, and said it was three cents a mile a ton, I believe; did you not?

A. No.

Cr.-Q. 233. What did you say on that subject?

A. I said the rate was $3.00 per hundred pounds from here to New York, the express rate.

Cr.-Q. 234. The average of your business, what do you pay to the Iron Mountain railroad for that kind of service from here to Texarkana? A. What do we pay?

Cr.-Q. 235. Yes. A. At present we pay all we get.

Cr.-Q. 236. Sir?

A. At present our rates are the same as the Iron Mountain express department rates. We pay according to the same tariff that they have got; the Iron Mountain road forces us to do that, and we have got the same tariff.

599 Cr.-Q. 237. What did you pay before this litigation sprung up, do you know?

A. I think the contract was a daily contract; so much per day.

Cr.-Q. 238. That had no reference to the tonnage or mileage, except a limited number of tons?

A. It had no reference to the tonnage except the limit as to the amount carried.

Cr.-Q. 239. If I remember you said the fast freight is one half the fast freight rate, don't you get your express rate at less than that from the Iron Mountain road?

A. I did not answer a question of that sort.

Cr.-Q. 240. You did not? A. I don't remember that I did.

Cr.-Q. 241. Did you say this, to New York from St. Louis it is double the fast freight rate? A. No, sir.

Cr.-Q. 242. How do you say about it now; what is it?

A. I don't know what the fast freight rate is except from hearsay.

Cr.-Q. 243. Did you say just now you only got from the public that which you gave the Iron Mountain railroad?

A. The Iron Mountain railroad charges us their full tariff on what they carry for us.

Cr.-Q. 244. They have made a smaller tariff than you served the public at before this litigation sprung up, you say?

A. In some instances.

Cr.-Q. 245. And they are carrying for the public at that smaller rate to-day, are they not?

A. I don't know what they are carrying for the public for.

Cr.-Q. 246. You know what their published rates are?

A. Yes, sir.

Cr.-Q. 247. You know of no discrimination in those things do you? A. No, sir; not of my own knowledge.

Cr.-Q. 248. Shall it stand in the record there, that you only get for the services you render from the public just that which you hand over to the Iron Mountain Railroad Company for the services it performs for you?

A. My answer was this, that we paid the Iron Mountain road their full express rate tariff for what they carry for us, and our tariff and their tariff is the same.

600 Cr.-Q. 249 When they started the express department and established their rate of tariff, then you made one to conform to it?

A. We made one to conform to it, because we could not expect to do business on the line of the road, and charge more than they did.

Cr.-Q. 250. Have you made any difference in reference to charging for gathering up packages before or since the inauguration of this litigation; do you charge the public for gathering up those packages, or do you serve the public as you did before this litigation was inaugurated?

A. We serve the public as we did before.

Cr.-Q. 251. In that connection say this, whether or not this service of gathering up packages and transporting them and delivering them has not been always a means of advertising and gathering up express business and no charge ever made for it?

A. I could not say that.

Cr.-Q. 252. You don't mean to say that you charge your customers at the rate of $30.40 per ton for gathering up this express matter and delivering it at the places of destination?

A. No, I did not say that.

Cr.-Q. 253. You don't say that? A. I don't say that.

Cr.-Q. 254. Let me ask you one or two questions with reference to what wagons and teams you use here in the city—the Southern Express Company—what wagons and teams do you use here?

A. The wagons and teams that are used in the collection of our matter belong to the Adams Express Company.

Cr.-Q. 255. Your relations with the Adams Express Company are friendly, are they not? A. Yes, sir.

Cr.-Q. 256. The two companies are friendly? A. Yes, sir.

Cr.-Q. 257. Does the Adams Express Company do business on the Iron Mountain railroad? A. It does not.

Cr.-Q. 258. What road in this neighborhood does it do business on that you know of? A. It does business on the St. Louis and San Francisco; on the St. Louis and Cairo Narrow Guage; it does business on the Vandalia.

Cr.-Q. 259. Does the Southern Express Company do business over either one of the roads you have last named? A. No.

Cr.-Q. 260. Has it ever done business over them at any time? A. Not to my knowledge.

601 Cr.-Q. 261. It has facilities for doing that business, has it not, if it chose to do it? A. I could not answer that.

Cr.-Q. 262. Who is the principal officer of the Adams Express Company in the city of St. Louis, what is his name?

A. C. C. Anderson, the agent of the Adams Express Company.

Cr.-Q. 263. Where is his office? A. 212 North Fifth.

Cr.-Q. 264. Where is your office? A. 212 North Fifth.

Cr.-Q. 265. Your offices are together? A. Yes, sir.

Cr.-Q. 266. In the same building? A. Yes, sir.

Cr.-Q. 267. Is any of the clerical labor performed by the same gentlemen in that office; is there any one in the office that is in the service of that Adams and Southern Express Companies at the same time? A. They are all in the service of the Adams Express Company.

Cr.-Q. 268. What do they do for the Southern Express Company?

A. They perform duties, as servants of the Adams Express Company for the Southern.

Cr.-Q. 269. So as such, the Southern Express Company has no independent officers here?

A. Except myself.

Cr.-Q. 270. Are you in anywise connected with the Adams?

A. No, except as our business relations bring us together.

Cr.-Q. 171. You are not employed by the Adams yourself?

A. No.

Cr.-Q. 272. But all the others are?

A. All the others located in the city.

Cr.-Q. 273. You use the same building? A. Yes, sir.

Cr.-Q. 274. The same office furniture?

A. We have some little furniture of our own.

Cr.-Q. 275. The principal furniture belongs to the Adams?

A. Yes, sir.

Cr.-Q. 276. And the teams belong to the Adams? A. Yes.

Cr.-Q. 277. And you occupy the same place with the Adams?

A. Yes, sir.

Cr.-Q. 278. And all the servants of the Southern Express Company are really servants of the Adams except yourself?

A. Yes, sir; that are located in the city.

Cr.-Q. 279. Could you, Mr. Albright, tell us any other relations
that subsist between these companies and those you have
602 spoken of this morning; is there any further agreement you
are cognizant of?

A. You mean business arrangements in the city of St. Louis?

Cr.-Q. 280. Yes, or elsewhere?

A. I don't know that I exactly understand the question.

Cr.-Q. 281. The point in my mind is this, whether upon reflection since last night you are now better able to state anything on the subject of there being an agreement that the Southern Express Company will not go into the territory of the Adams, and the Adams will not go into the territory of the Southern Express Company?

A. No, I don't know of my own knowledge.

Cr.-Q. 282. You can't tell? A. No.

Cr.-Q. 283. Can you tell us why the Southern Express Company has never done business on any of the roads you have named that the Adams Express Company does business on?

A. I am not familiar enough in the matter to answer that question; it is a matter that belongs to the general officers of our company, therefore it don't come within my knowledge.

Cr.-Q. 284. You, on yesterday, said that Mr. Aikin made some remarks to you in your office or his office, at the time he told you that he erased this clause 8 in the tariff rates, the classification of packages weighing less than one hundred pounds, etc. What was it that Mr. Aikin said on that occasion?

A. He told me that they would abandon that clause.

Cr.-Q. 285. For what reason?

A. I don't think he gave me a reason at the time. He just said, here is a matter I want to inform you of, picked up the table, handed it to me, showed the clause to me, and said, we "will abandon that clause from to-day (or to-morrow)," I forget which.

Cr.-Q. 286. Didn't Mr. Aikin tell you the cause was that from their experience they found it was unfair to enforce that against the public, and, therefore, he modified it by erasing it altogether?

A. No, I don't remember.

603 Cr.-Q. 287. Now, have not your company made out of other people's parcels, packages themselves, and called these packages; and demanded that they be taken as single packages, although they may belong to a dozen different persons, and have as many different destinations?

A. Yes, sir.

Cr.-Q. 288. Do you know of instructions given to your messengers to open these packages thus made and then distribute them at different places on the route of the railroad?

A. Yes, sir; I know of instructions of that sort; if you will allow me to explain.

Cr.-Q. 289. Yes, you have the right to.

A. The instructions to the messenger would be—I would have a sack put up with packages in it, destined to various points and consigned to the furtherest point, say, for instance, a sack between here and Texarkana, consigned to the agent at Texarkana, containing packages for points in Texas; various points in Texas; that he would open when he got to Texarkana.

Cr.-Q. 290. Now, Mr. Albright, is that the only case in which messengers would be instructed to open a package where it was going beyond the terminus of the Iron Mountain railroad?

A. No, sir; we sometimes put up packages destined for various points along the line of the road and consign them to our agent at the furtherest point, or terminal point, of the road and instruct the messenger to open the sacks and distribute the contents along the line of the route.

Cr.-Q. 291. Do you know the fact that your messengers at Cairo, Illinois, your agents have been in the habit of consigning goods to Poplar Bluff, Mo., a distance of 85 miles, and then opening the packages along the line and distributing them clear from thence to Texarkana? A. I do not.

Cr.-Q. 292. Your business is in the city here? A. Yes, sir.

Cr.-Q. 293. Are you simply local agent?

A. Local agent in the city of St. Louis.

Cr.-Q. 294. The schedule or exhibit marked 22 has, I belive, 71 items in it, has it not?

A. I have not counted them; I don't know.

Cr.-Q. 295. I did; I think it is just 71, 22 of those items I find to
be safes, and 25 of them are chairs; I find each of them
604 has a different date; almost all of the balance of the items I
find to be newspapers from St. Louis to points along the railroad; what are those, daily newspaper sent to local dealers in newspapers in the country?

A. There are a few items, I don't know how many, of newspapers, daily newspapers.

Cr.-Q. 296. I find that on the 17th of December one pa.; what does that mean, package? A. Package.

Cr.-Q. 297. One Pa. daily papers, seven pounds, F. C. Smith, De Soto, Mo., 42 miles, the railroad charges 25 cents for that; before November they charged 15 cents; is that what it means?

A. Yes, prior to that they charged us 15 cents.

Cr.-Q. 298. Now, I find that you have figured out that on that 7 pounds of newspaper, it is at the rate of $1.70 per ton per mile; is that so?

A. That is the calculation.

Cr.-Q. 299. The 2 pounds of newspapers, according to your calculation, amounts to $1.70 per ton per mile; is that it?

A. That item.

Cr.-Q. 300. I find that on the 14th of December your bill for one Pa., meaning package, I suppose? A. Package.

Cr.-Q. 301. Of daily papers, five pounds, to the same persons, same destination, and the charge is 25 cents, the same charge; I find that the charge per ton is $2.38; is that right?

A. That is the calculation.

Cr.-Q. 302. That is your calculation, $2.38 per ton?

A. Yes, sir.

Cr.-Q. 303. The same state of case exists on the 16th of December, to the same person, same amount, place, 5 pounds; $2.38 per ton; what does the Southern Express Company charge for delivering a package of five pounds of papers, at De Soto, in its business, what would it charge?

A. A similar package of five pounds of daily papers consigned to De Soto?

Cr.-Q. 304. Yes.

A. It would charge 10 cents; that is the rate, as I understand, charged by the Iron Mountain road to the public.

Cr.-Q. 305. The fact is, in all cases I have given you of newspapers, you charge the public the same that the Iron Mountain Railroad Company charges, do you?

605 A. We charge in the case of these papers the same that the Iron Mountain Railroad Company charged as per stamp they have; they have a stamp I have seen. They charge for a five-pound bundle 10 cents, ten-pound bundle 15 cents, according to their stamp.

Cr.-Q. 306. You charge the same?

A. We charge the same.

Cr.-Q. 307. So that the per cent. per mile for a ton is just as hard on the public in your hands as it is in the hands of the Iron Mountain Railroad Company?

A. The charge there made against us by the Iron Mountain road is 25 cents, whereas we would have charged for five pounds 10 cents.

Cr.-Q. 307. I am talking about the case to-day; what is it to-day? A. We charge 10 cents to-day.

Cr.-Q. 309. What do they charge to-day?

A. I don't know whether they have abrogated that stamp or not. This is a copy of that charge, according to that stamp.

Cr.-Q. 310. Are you able to tell to-day whether they make any higher charge for delivering those daily papers than you do to-day? A. No, sir.

Cr.-Q. 311. You simply say by this paper they did that prior to the 6th of November; is not that all you say by this paper?

A. I don't know that I catch the question exactly.

Cr.-Q. 312. What I mean is this: you have stated by everything in that paper, you tell us that prior to the 6th of November last they charged 25 cents for each package. A. No.

Cr.-Q. 313. You don't tell what they charged since the 6th of November?

A. The amount charged on similar packages prior to November 6th, on a package of five pounds was 10 cents charged us by the Iron Mountain railroad; since that time they charged us 25 cents.

Cr.-Q. 314. Prior to that they charged you but ten cents?

A. They charged us ten cents prior to that time.

Cr.-Q. 315, Subsequently do you mean to say they charged you 25 cents? A. Charged us 25 cents, and in some instances charged us 25 cents just prior to that; for a week or two prior in that particular case.

606 Cr.-Q. 316. How did the Southern Express Company charge the public just prior to this litigation on matters of that kind?

A. Daily newspapers?

Cr.-Q. 317. Yes, a package of 5 pounds; what did you charge. A. We very often deadheaded them.

Cr.-Q. 318. How did you charge is the question? A. I don't remember our rate; I cannot recall our rate.

Cr.-Q. 319. The Iron Mountain Railroad Company would deadhead, would it not. A. I don't know.

Cr.-Q. 320. If it was permitted to to do under the order of court many things for many people? A. I don't know. We often deadheaded bundles of newspapers for the public.

Cr.-Q. 321. Do you mean to tell the trial tribunal that is to hear this cause finally that daily the Iron Mountain Railroad Company for 22 days and daily for 25 consecutive days you shipped a safe and a chair for customers over the Iron Mountain road; patrons of your express business by this paper?

A. We shipped a safe.

Cr.-Q. 322. Who do you mean. A. The Southern Express Company.

Cr.-Q. 323. Did you do that for a customer? A. We shipped a safe over the Iron Mountain road during that time for the protection of property entrusted to our care by the public.

Cr.-Q. 324. You say the safe herein specified was a safe belonging to the Southern Express Company? A. Yes, sir.

Cr.-Q. 325. Is not that true with reference to the chair?

A. No, sir.

Cr.-Q. 326. Whose property was this chair?

A. The chair belonged to the messenger.

Cr.-Q. 327. The messenger is in the service of the Southern Express Company? A. Yes, sir.

Cr.-Q. 328. Now the object of shipping that safe was to protect yourselves in the matter of valuable articles put in the safe?

A. To protect property entrusted to our care by the public.

Cr.-Q. 329. So, then, you shipped other things when the safe was going, and other things when the chair was going, besides the chair and safe, did you not? A. Yes, sir.

Cr.-Q. 330. How came you to pick out this chair and this safe, and take that as a basis of calculating the charge made by the railroad company for a ton of freight per mile?

607 A. Because it seemed to me to be amongst the highest rate charged us.

Cr.-Q. 331. Now, can you tell us right in that connection what would be the average of all the freight sent by your express company over the Iron Mountain Railroad, including the chair and safe on the 13th of December, 1880?

A. I could not.

Cr.-Q. 332. Do you want to be understood as saying it would average the enormous sum of $2.38 per ton per mile? A. No.

Cr.-Q. 333. Could you by reference to your books furnish us what the average charge per mile per ton was on the 13th of December, sent over the Iron Mountain Railroad by your express company?

A. I should think that would require an expert accountant, which I am not.

Cr.-Q. 334. You don't claim to be that? A. No.

Cr.-Q. 335. Who aided you in making this paper, Exhibit 22?

A. I calculated it all myself, with the exception of the last column on the last page. Mr. G. W. Agee calculated the last column on last page.

Cr.-Q. 336. You are not an accountant?

A. Not an expert accountant.

Cr.-Q. 337. Who aided you in gathering up the material out of which this exhibit is made, anybody?

A. No; I gathered it up myself.

Cr.-Q. 338. When did you do this; when did you make Exhibit 22? A. A few days ago.

Cr.-Q. 339. You made it in anticipation of enabling yourself to elucidate all matters that came before you on this subject when your deposition was taken?

A. To enable me to give my testimony correctly.

Cr.-Q. 340. In your opinion would the property including chair and safe transported by the St. Louis, Iron Mountain & Southern Railroad Company, on the 13th of December last, average $2.38 per mile per ton?

A. No; I think not.

Cr.-Q. 341. You have stated you have taken what you conceive to be about the highest items?

A. Among the highest, was my answer.

608 Cr.-Q. 342. On yesterday you and I talked about a $5,000 diamond ring, which of course, has a mere imaginary weight as compared with a freight train, has it not?

A. A small weight.

Cr.-Q. 343. Now, could you, by any process you understand in mathematics, weigh that ring, or that package weighing less than a pound, and then tell the court or examiner how much per ton per mile your charge would be upon that ring at the rate of $6.40 from here to Texarkana, 500 miles?

A. Value $5,000?

Cr.-Q. 344. Yes. A. I suppose I might, by laborious effort.

Cr.-Q. 345. Do you think in the ordinary affairs of men that that is a fair way between you and the consignor of that ring to estimate the transit of it? Suppose you had no other article in your express car but that ring; would you regard that as a fair way of estimating the price to be for its transportation?

Counsel for plaintiff objects on the grounds that the court, and not the witness, is to express an opinion about the justice. The witness has to state facts.

A. There is no parallel between a package of paper and a diamond worth $5,000, because the papers are not worth $5,000. We estimate the price on the weight of a package of papers and we estimate the price on the weight of a package of jewelry. We charge 15 cents for a package of jewelry of one pound; if it is valued, we charge a per cent. on the value for the risk, responsibility, &c.

Cr.-Q. 346. I am not asking what you do do; I am asking what you could do and your opinion as to whether that would be a fair way to deal with that property; simply to estimate its carriage by the pound for a distance of 500 miles?

A. When it is valued we estimate the cost for carrying it on its value if it is valued above $50.00.

Cr.-Q. 347. I notice in Exhibit 22, in, I believe, the case of a safe which is charged to the "Mess. So. Ex. Co." That means the messenger of the Southern Express Company, does it not?

A. Yes, sir.

Cr.-Q. 348. But all the time that is property he uses that the Southern Express Company may take care of valuables entrusted to it for transit? A. Entrusted to the messenger.

Cr.-Q. 349. What is it worth to take a trunk, an ordinary traveling trunk, from here to Texarkana by express?

609 A. That is owing to the weight.

Cr.-Q. 350. Say it weighs ten pounds, a bulky thing like a trunk, about how much would you charge?

A. A ten pound trunk is not very heavy; if you will let me have the classification I will tell you what ten pounds is. (Witness examines paper.) We would charge on ten pounds to Texarkana 60 cents.

Cr.-Q. 351. So the probabilities are, if you were called upon to carry an ordinary trunk to Texarkana, the price would not be less than 60 cents? A. It would be according to its weight and [illegible] hardly probable that a trunk would weigh less than ten pounds.

Cr.-Q. 352. If it should weigh ten pounds, you would charge [illegible] cents? A. Yes, sir.

Cr.-Q. 353. In making your estimate for the carriage of express matter don't you take into account the space at all the articles occupy? A. Sometimes.

Cr.-Q. 354. You have to, don't you? A. Yes, sir.

Cr.-Q. 355. For instance, if I call upon you to carry a show case which may weigh but a very few younds, being of light material, you would charge compensrtion for the space?

A. We make extra charges for the space if it is light and bulky.

Cr.-Q. 356. I want to ask you this, suppose I come to your office and present you a box securely sealed with 100 pounds of lead and another one securely sealed with 100 pounds of gold, what would be your rate of charges upon those respective boxes from here to Texarkana?

A. If the man did not value them?

Cr.-Q. 357. If the man didn't value them you would make no difference? A. I would charge according to the weight; if I didn't know the value I would have to charge according to the weight.

Cr.-Q. 358. Suppose you did know the value, what would be your duty? A. I have never had a case of that kind.

Cr.-Q. 359. I am asking what would be your duty if that case should arise?

A. And the man expressed no value?

Cr.-Q. 360. Certainly; he says this is one 100 pounds of lead and that is 100 pounds of gold; I want you to take them both to Texarkana; what would you say to him?

610 A. I would ask him to give the value of the gold.

Cr.-Q. 361. Suppose he stated simply, "this is a box of lead and this is a box of gold; each weighs 100 pounds;" what would you do in that case?

Counsel for the plaintiff objects.

A. I never had any instructions what I should do. I have never had a case of that kind presented to me.

Cr.-Q. 362. What would be your course of conduct in that case?

A. The matter has never been presented to me by any customer, and I have never formed a determination what I would do.

Cr.-Q. 363. Suppose a man were to present to you a box, stating, "this is a box of 100 pounds of gold bullion; I want you to take it to Texarkana;" what would you say?

A. I would ask him the value.

Cr.-Q. 364. Suppose he did not say anything at all?

A. I would insist on its value.

Cr.-Q. 365. Suppose he declined to say what its value was; told you he did not know its market value, but it was 100 pounds of gold; what would you do in that case?

A. I don't know what else I could do, if he insisted on its being shipped, but to forward it.

Cr.-Q. 366. At what rate?

A. I suppose I could calculate the value.

Cr.-Q. 367. Would you do it?

A. I never had a case of that kind presented to me.

Cr.-Q. 368. Would it not be your duty, under your instructions, and under the general direction of your business to calculate the value of the gold and charge him for it?

A. I would certainly insist on his giving the value.

Cr.-Q. 369. You need not go back to that. Suppose he simply says, as my man would, "that is 100 pounds of gold; what will you charge me to take it to Texarkana;" you ask him the value and he declines to give it?

A. One hundred pounds of gold has a certain value.

Cr.-Q. 370. Would you not make a calculation of its value and charge him according to its value?

A. I suppose I would; I never had a case of that kind.

Cr.-Q. 371. Would you not do the same thing in reference to a box of lead?

611 A. The lead would not amount to a great deal in value. Probably I would ask him the value. I would make no question about it.

Cr.-Q. 372. Would you not charge him a great deal more for the gold than the lead?

A. I suppose so, according to the difference in the valuation of the two, as determined by me.

Cr.-Q. 373. You would make that difference as a sensible man?

A. I would, as determined in his presence, where he was; telling him of the value. I suppose there would be a difference.

Cr.-Q. 374. The point in my mind is to get you to answer this: whether one of the essential elements in the making of charges for carrying express matter is not the value of thing to be carried?

A. Over a certain value, if we know the value; if the value has been given to us.

Cr.-Q. 365. How has your business been running in reference to profit since the starting of the Iron Mountain express department?

A. I am not familiar with the accounts of our business over the Iron Mountain road, because they are not kept here; that is, the general business over the road.

Cr.-Q. 376. Can you answer me this question, whether your busidess is run at a paying rate or losing a rate?

A. At present my impression is it is run at a losing rate.

Cr.-Q. 377. Can you furnish me the data by which me may see? A. No; it is not in my possession.

Cr.-Q. 378. Who is there in your office to whom we should apply to get that information?

A. Our auditor is the only one. He resides in Memphis—Charles L. Loop.

Cr.-Q. 379. The paper you handed me this morning, for which I am obliged, entitled "So. Ex. Co. Tariff Rate on Freight and Money" from St. Louis, Mo., is made out in such a form I cannot understand it, and if you can furnish a printed tariff rate of your company, instead of this paper, I will be obliged, and [illegible] back, and I will attach it to your deposition.

A. As I said yesterday I will have to send to Memphis. I am not certain whether Mr. Loop has it.

612 Cr.-Q. 380. Will you ask him for a copy?

A. I will write to him.

Cr.-Q. 381. How long have you been connected with the Southern Express business? A. Ten years.

Cr.-Q. 382. Do you know G. N. McFadden?

A. I know a Mr. George R. McFadden. He is our agent at Little Rock, Ark.

Cr.-Q. 383. Where was he agent last summer of the Southern Express Company? A. I think he was agent at Texarkana.

Cr.-Q. 384. Would you know his signature if it were shown to you? A. I think so.

Cr.-Q. 385. Look at the name at the foot of that paper and tell us if it is his signature in your opinion? A. It is not.

Cr.-Q. 386. Whose is it? A. I cannot swear. That is not his though. I am familiar with his signature.

Counsel for the defendant shows witness a paper part in writing and part printed, headed "Southern Express Company, Express Forwarders, Texarkana, Ark. 7, 11, 1880," addressed E. R. Fundy, Dallas, Texas, and asks witness if he knows anything about the printing of it, where it was done, and who caused it to be printed?

A. I do not.

Redirect examination by Mr. GLOVER for the plaintiff:

Cr.-Q. 387. How many teams has the Adams Express Company employed in the express business at St. Louis? A. You mean wagons?

Counsel for the defendant objects, as irrelevant.

Cr.-Q. 388. Wagons and teams?

Counsel for defendants objects, as irrelevant and incompetent.

A. I think they have about 15 wagons; single and double, and between 30 and 35 horses. I am not positive about that; but that is near it.

Cr.-Q. 389. You said something in your cross-examination about the employees of the Adams Express Company doing a certain amount of work for the Southern Express Company at your office at St. Louis; does the Southern Express Company pay the Adams Express for that?

Defendant objects, as irrelevant, incompetent, and leading.

A. There is an arrangement between the Southern and Adams Express for such payment.

Cr.-Q. 390. You don't know about the payment, simply because that is not in your department? A. I don't know about the

613 payments, because I don't see the payments made. It does

not come in my part of the business. It is not my business to pay the bills.

Cr.-Q. 391. If you are placed in such an embarrassing position as that described by Col. Thoroughman in his cross-examination, and in which you said you never were placed, about lead and gold packages, have you not superior officers whom you could apply to to determine for you what you would do under under circumstances of that sort?

Defendant objects, as incompetent and irrelevant.

A. I have.

C. H. ALBRIGHT.

James McClung, sworn on the part of the plaintiff, testified as follows:

Direct examination by F. E. Whitfield, Esq.:

Q. 1. What is your residence? A. St. Louis.

Q. 2. What is your business?

A. I am contracting agent for the Vandalia, headquarters in the general office, 4th and Chestnut, with Mr. Hibbard.

Q. 3. How long have you been connected with the railroad business?

A. With the exception of a year and a half, for twenty-eight years.

Q. 4. If you know the rates of different classifications of freight from here to New York, please state.

Defendant objects, as irrelevant and incompetent.

A. I have got a schedule in my pocket. (Witness produces paper.)

Q. 5. Are those the rates?

Defendant objects to the schedule of rates, as incompetent and irrelevant.

A. These are the rates in force.

Q. 6. Does that schedule or table that you produce contain a correct statement of the rates of freight from St. Louis to points therein designated?

A. From East St. Louis?

Q. 7. From East St. Louis.

A. This table of rates are all from East St. Louis, and are
614 the rates we are governed by to all points named. When we go
to sign a bill of lading we refer to that sheet and insert the rate as it is represented on that sheet. If a bill of lading is brought into the office to be signed, we look at the bill of lading, see what the articles are, then we refer to the classification, which is alphabetically arranged.

Q. 8. Mr. Thoroughman: What expres company's tariff is that?

A. This is not an express company's tariff; this is freight.

Q. 9. Freight tariff of the road itself?

A. Of the road itself.

Defendant objects to all evidence concerning that tariff, on the ground of irrelevancy and incompetency.

Q. 10. Is this the tariff of all railroads connecting St. Louis with those points?

A. That is the joint tariff of all roads named there—of roads leading East, Chicago & Alton, Wabash, Ohio & Mississippi, Indianapolis & St. Louis, Vandalia; I believe that is all that are named there; joint rate of transportion from East St. Louis to take effect Monday, November 22nd, 1880.

Q. 11. Is that now in force?

A. Now in force. This is the pool tariff; these are the pool rates of roads running out of here which are in the pool; they are the agreed rates.

Q. 12. Will you just attach that schedule of tariff to your deposition? A. Yes, sir.

The paper marked Exhibit No. 20.

Q. 13. Give the rate, or means of ascertaining the rate from St. Louis to the several points eastward designated on that schedule.

Defendant's counsel objects, as irrelevant, incompetent, and immaterial.

A. I don't know, that I exactly understood that question.

Q. 14. How do you get from here to East St. Louis if I give you freight from St. Louis proper?

A. If you want to ship freight from St. Louis, we quote five cents a hundred additional to the rates named on that tariff, on first, second, third, fourth, and fifth classifications, and four cents on the balance of the classifications, for crossing the river.

Q. 15. What are the rates from New York to St. Louis.

Defendant objects as before.

615 A. I have not got them.

Q. 16. Are there any fast freight lines between St. Louis and New York?

Defendant objects, as immaterial, incompetent, irrelevant, and leading.

A. Yes; there are a number of them; there are fast freight lines over all the roads leading East from here.

Q. 17. How fast do those fast freight lines travel, do you know?

A. Well, the lines running over the roads I represent—the Star Union Line and the Erie & Pacific Dispatch, the Star Union Line is the Pennsylvania Campany Fast Freight Line—they bring freight from New York here in five or six days at times, and at other times a good deal longer.

Q. 18. Do you know at what speed they travel?

A. I couldn't tell; we calculate we make excellent time from New York here if we make it in six days.

Defendant objects to all this, on the grounds aforesaid.

Q. 19. Do they make faster time than ordinary freight trains upon the several railroads constituting the lines from here to New York?

A. Some of the freight shipped by fast freight lines goes on the fastest trains, and some of it gets occasionally on the slow trains; it is just as it happens.

Q. 20. So, then, really there is no such distinction as fast freight trains and slow trains?

A. We have fast trains on the Vandalia road; we have a fast train that hauls live stock and freight.

Q. 21. I asked you a while ago if there was any difference between freight shipped on fast trains and those on slow trains; you speak of there being fast trains? A. Yes; fast freight lines you spoke of?

Q. 22. I asked you if there was any difference; you said freight sometimes came on one and sometimes on the other; I don't see much meaning in keeping any distinction between the classes of trains.

Defendant objects to counsel for plaintiff cross-examining the witness.

A. Fast freight lines, I understood you asked about, not fast freight trains.

Q. 23. Is there any difference between transportation on the fast freight lines and ordinary fast freight trains on the rail-
616 roads?

A. Nothing farther than all roads over which fast freight lines run make it a point to give the fast freight line business preference in hurrying it through.

Q. 24. Hurrying it through? A. Yes; if they have more than can haul that will go first; that gets the preference; a railroad company's ordinary business will take the slower trains.

Q. 25. Mr. THOROUGHMAN: Or wait until there are cars for it to go in, as I understand?

A. Yes, sir.

Q. 26. Mr. WHITFIELD: Do you know whether or not the Iron Mountain Railroad Company gives preference to freight shipped by fast freight lines? A. I don't know; all I know is I understand it to be a rule of roads that have fast freight lines that are recognized as such to give them preference; to give that business preference.

Q. 27. Does it cost the shipper anything more to ship by one of these fast freight lines than it does by ordinary freight?

Defendant objects, as immaterial, incompetent, and leading.

A. The rates are the same.

Q. 28. It costs the shipper the same? A. It costs the shipper the same whether it goes by the line or by the road.

Q. 29. What are the names of those fast freight lines you mentioned a while ago?

A. The fast freight lines working over the the Vandalia [illegible] the Star Union Line; that works over the Vandalia & Pennsylvania railroad, and the Erie & Pacific Despatch works over the Vandalia & Erie railway; that makes all that we have.

Q. 30. Have those freight lines agents here? A. Yes, sir.

Defendant objects, as immaterial and irrelevant.

Q. 31. What do those agents do?

Defendant objects, as before.

A. The way-bills of all West bound business all come over their lines, come directly to them, and they see to its delivery and collect the freight. The railroad officers don't have anything to do with the collecting of it.

Q. 32. How much does a railroad pay those persons?

Defendant objects, as incompetent and irrelevant.

A. The line is paid a percentage for doing the business.

Q. 33. The freight line is?

A. The freight line is paid a percentage, not the individu-
617 als that transact the business; they are not paid by the rail-
road directly. The line is allowed a percentage; that percentage covers expenses of keeping up these offices.

Q. 34. If I ship 1,000 pounds of freight from here to New York by the Star Union Line, the tariff—first-class freight—will be how much 1,000 pounds?

A. To New York $13.90 from East St. Louis or $14.40 from St. Louis.

Q. The railroad company will not receive the entire $13.90? A. It is billed at the same rate, that business is, that the railroad contracts and handles through their own office.

Q. 36. I understand that; I want an answer to the question as to whether the railroad gets all the $13.90; I understand you to say the freight line retains a percentage?

A. The freight line is allowed a percentage by the roads; I don't know what that percentage is.

Defendant objects, as before.

WITNESS: (Continuing.) That percentage is supposed to pay the expenses of keeping up their offices and running the line, and looking after business, and the railroads are relieved of business that the officers of the fast freight lines do.

Q. 37. Do the agents of the fast freight lines ever handle the freight at all?

Defendant objects, as before.

A. They don't handle the freight; they don't handle the goods; they handle the papers.

Q. 38. Do they or not see the freight from the time it leaves the custody of the shipper till it arrives at its destination?

Defendant objects, as immaterial.

A. They only see the records; they handle the records; that is all they have anything to do with, the records.

Cross-examination by Col. THOROUGHMAN, counsel for defendant:

Cr.-Q. 1. Do you know anything about express rates on your line of road? A. No, I do not.

Cr.-Q. 2. What express company does business upon your line; do you know? A. The Adams and, I think, the American.

Cr.-Q. 3. You know nothing about it, however, as to the details or or terms between the railroads and the express companies upon them which are doing business?

618 A. No; I have no means of knowing.

Cr.-Q. 4. You have stated that you were contracting agent; tell us what that means—what your functions are.

A. I go on the exchange; go around town among manufacturing establishments and solicit business.

Cr.-Q. 5. That is your business, to go and make contracts or charges for the services the railroad performs in carrying this freight?

A. I quote this freight tariff; yes.

Cr.-Q. 6. The paper you have produced, marked Exhibit 20, which is the tariff of the combined railroads named, and this pertains solely to the common freight of the lines?

A. Yes, sir.

Cr.-Q. 7. And has no reference at all to express charges?

A. No.

Cr.-Q. 8. Now a word in reference to this fast freight line; I understood you—the other gentlemen didn't—you mean that as a means of getting trade upon the line, they kept on the various roads fast freight lines, which means nothing more nor less than the freight carried on that line shall have the preference over ordinary freight?

A. Yes, sir.

Cr.-Q. 9. It goes no faster? A. No.

Cr.-Q. 10. The profit to be made by those who are engaged in gathering up this fast freight is found in the road making a rebate to them for their work in gathering it up, the road doing everything else concerning the handling of that property except the mere paper matters, that are attended to by the agents of the fast freight lines; that is all there is of it?

A. That is all there is of it.

Cr.-Q. 11. I will get you to state if it is not a fact, the more property a railroad has to carry the less it can afford to carry it for, a cheaper rate; isn't that so?

A. As a rule that would be the case; however, there are times when they get freight rates broken down, so that the more freight we carry the less we make.

Cr.-Q. 12. I mean the ordinary affairs of the railroad; the more they get the less they can afford to take it for?

A. That is supposed to be the rule.

Signature waived.

619 **JAMES HARDING**, sworn and examined on behalf of the plaintiff, testified as follows:

Direct examination by Mr. GLOVER.

Q. 1. Give your name, General Harding.

A. James Harding.

Q. 2. Do you hold any official position? A. I do.

Q. 3. State what it is.

A. I am one of the railroad commissioners of the State.

Q. 4. How long have you filled that office?

A. Four years.

Q. 5. You are now in the office exercising its duties?

A. Yes, sir.

Q. 6. I hold in my hand a document purporting to be a report of the Kansas City, Fort Scott & Gulf Railroad Company to the Railroad Commissioners of the State of Missouri, for the year ending December 31, 1879, and marked "Filed April 30, 1880." Will you examine that document and state what it is?

Counsel for the defendant objects, on the ground of irrelevancy and incompetency, and objects to any statement that the witness can make about it.

A. Do you mean that I shall state what it is?

Q. 7. That is, whether it is a report of that road.

A. It is; yes, sir.

Q. 8. At what time was it filed in your office?

A. On the 30th of April, 1880.

Q. 9. State whether or not it is an archive of the office of the Railroad Commissioners of the State of Missouri?

Counsel for the defendant objected to the question as irrelevant.

A. Yes, sir; it is.

Mr. GLOVER: I propose to read, if satisfactory to you, two entries.

Mr. THOROUGHMAN: We do not object on the ground that you read it out of a book, but we object to the matter as not relevant to this case.

Mr. GLOVER: I will read from the report which the witness has mentioned, entitled Report of the Kansas City, Fort Scott & Gulf Railroad Company to the Railroad Commissioners of the State of Missouri, &c., under this heading: "Earnings, expenses, 620 and net earnings, etc., of the passenger department; total expenses per passenger train a mile, 76 cents;" and from the heading, "Receipts, expenses, net earnings, etc., of freight department; total expenses per freight train a mile, 98 cents." The above is read from pages 12 and 13 of said report.

Plaintiffs counsel produces and shows to the witness a document purporting to be a Report of the Kansas City, St. Joseph and Council Bluffs Railroad Company to the Railroad Commissioners of the State of Missouri, for the year ending December 31, 1879, filed April 30, 1880, and hands the same to the witness and asks him to state what it is.

To which counsel for the defendant makes the same objection as was made to the other document presented to this witness.

A. It is the Annual Report of the Kansas City, St. Joseph and Council Bluffs Railroad Company made to the Railroad Commissioners for the year ending December 31, 1879.

Q. 10. Where is that report at this time; where does it belong? A. In the office of the railroad commissioners.

Q. 11. Is it an archive of that office? A. It is.

Q. 12. A public record? Yes, sir.

Q. 13. What time was it filed there? A. On the 30th of April, 1880.

Plaintiff's counsel proposes to read from the report.

Defendant's counsel objects, not to the fact that counsel reads from a book, but on the ground of irrelevancy and incompetency.

Mr. **Glover**: I will read from the report of the said Kansas City, St. Joseph and Council Bluffs Railroad Company, by the witness mentioned, under the heading, "Earnings, expenses, and net earnings, etc., of passenger department total expenses per passenger train a mile, 90 cents."

I read also under the heading, "Receipts, expenses, and net earnings, etc., of freight department; total expenses per freight train a mile, $1.30."

Plaintiff's counsel produces and shows to witness a document purporting to be a Report of the Missouri, Kansas & Texas Railway to the Railroad Commissioners of the State of Missouri, for the year ending December 31st, 1879, filed June 10, 1880, and asks witness what it is.

621 A. It is the Report of the Missouri, Kansas & Texas Railway to the Railroad Commissioners, for the year ending December 31, 1879.

Defendant's counsel admits that the paper in the hands of the witness is a report to the railroad commissioners of the State of Missouri, and an archive of their office, and that it is what it purports to be.

Plaintiff's counsel proposes to read from the report. Defendant's counsel objects, as before.

Plaintiff's counsel reads from said last-mentioned report, pages 12 and 13, under the heading "Earnings, expenses, and net earnings, etc.," of passenger department; total expenses per passenger train a mile, $\frac{112}{1000}$ of a dollar; and under heading, receipts, expenses, net earnings, etc., of freight department; total expenses per freight train a mile, $\frac{814}{1000}$ of a dollar.

Plaintiff's counsel produces a Report of the Chicago & Alton Railroad Company, lessee of the Kansas City, St. Louis & Chicago and the Louisiana & Missouri River Railroad Companies, which defendant admits to be the report of said railroads to the railroad commissioners of the State of Missouri, for the year ending December

31, 1879, filed in the railroad commissioners' [illegible] and now an archive of that office.

Plaintiff's counsel reads from said last-mentioned [illegible] this heading, "Earnings, expenses, net earnings, etc., [illegible] department; total expenses per passenger train a [illegible] cents; and under this heading, receipts, expenses, [illegible] of freight department; total expenses per freight train [illegible]

Plaintiff's counsel produces a document which is [illegible] a Report of the Hannibal & St. Joseph Railroad Company to the Railroad Commissioners of the State of Missouri, for the year ending December 31st, 1879, filed April 6, 1880, the same being an archive of the railroad commissioners' office.

Plaintiff's counsel next reads from said last-mentioned document under this heading, "Earnings, expenses, net earnings, etc., of passenger department; total expenses per passenger train a mile, [illegible] cents," and under this heading, "Receipts, expenses, net
622 earnings, etc., freight department; total expenses per freight train a mile, $87\frac{1}{15}$." The same is read from pages 12 and [illegible] of said report.

Defendant objects, as before.

Plaintiff's counsel produces and shows to witness a bound volume, purporting to be 2nd Annual Report of the Board of Railroad Commissioners for the year ending June 30, 1879, State of Iowa, printed by order of the General Assembly, Des Moines; T. H. Mills, State printer, 1879, and asks the witness to state what he knows about that volume.

Defendant's counsel objects, as incompetent and irrelevant, and not an official paper as authorized by our law.

A. It was sent to the office of the railroad commissioners of the State of Iowa.

Q. 14. That is a file in your office?

A. Yes, it is there as a file; I do not know whether you call it one of the archives of the office or not.

Q. 15. What would you call it; a file of your office will do just as well as archive?

A. I should rather consider it as belonging to the library of the office.

Q. 16. What library?

A. Of office of the railroad commissioners.

Q. 17. Has it a library established by law?

A. Well, I don't know; we have a contingent fund allowed to us for the purpose of paying for maps, stationery, books, etc.

Q. 18. Was that paper delivered to you and other gentlemen who are railroad commissioners of the State of Missouri in your official capacity, or not?

Defendant's counsel objects, as incompetent and irrelevant.

A. Yes, sir.

Q. 19. Do any of you claim it to be your private property?

A. No, sir.

Q. 20. Is it a book in your office for public use or private use? A. I should consider it to be for public use.

Mr. **Glover**: I read from that book, page 148——

Defendant's counsel objects to any evidence being put in the record from that book, as incompetent and irrelevant.

Mr. **Glover** (continuing): The same being a part of the report of the Burlington, Cedar Rapids & Northern Railway Company, for the year ending June 30, 1879, as follows, under this caption: Recapitulation of expenses; expenses of running and management of passenger trains per train a mile, 37⅜ cents; expenses of running and management of freight trains per train a mile, 39⅜ cents. 623

Plaintiff's counsel produces and shows to witness a bound volume purporting to be the 10th Annual Report of the Board of Railroad Commissioners, January, 1879, Boston: Rand, Avery & Co., printers, to the Commonwealth, 117 Franklin street, 1879.

Counsel for defendant makes the same objection to this as to the Iowa report.

Mr. **Glover**: On page 1 the following:

"Commonwealth of Massachusetts: The railroad commissioners respectfully submit their 10th annual report."

Plaintiff's counsel places this book in the hands of the witness, and asks him to state what he knows about it.

Defendant's counsel objects.

A. It is the 10th Annual Report of the Railroad Commissioners of the State of Massachusetts.

Q. 21. Where does it belong?

A. It belongs in the office of the railroad commissioners.

Q. 22. How did it come there?

A. Sent by the railroad commissioners of Massachusetts.

Defendant's counsel objects to all this, as irrelevant.

Q. 23. How long has it been in your office?

A. I cannot state; it was received some time in 1879.

Q. 24. Is it a file of your office, or is it your private property?

A. It belongs to the office of the railroad commissioners of the State of Missouri.

Defendant's counsel objects to any matter being read from the book and transcribed into the record, on the ground that it is irrelevant and incompetent.

Plaintiff's counsel reads from said last-mentioned book, page 9, under this caption:

Costs of running train; the average cost of running train one mile during the year over all the roads covered by this report has been $\frac{822}{1000}$ of a dollar.

On the system of apportioning general and common expenses between the freight and passenger service adopted [illegible]

624 that is, on the basis of the number of [illegible] each description, the average cost of running a [illegible] one mile has been [illegible] of a dollar, and that of [illegible] freight trains has been one dollar and [illegible] of a dollar. The sys-tem of apportionment referred to has now been in use three [illegible] the cost per mile of running an average train, passenger and [illegible] trains, during each of those years is presented in the following [illegible]

1875–'6. Cost total of train a mile, $1.041; cost per passenger train a mile, [illegible] of a dollar.

Cost per freight train a mile, $1.064 of a dollar.

1876–'7. Cost per total train a mile, [illegible] of a dollar.

Cost per passenger train a mile, [illegible] of a dollar.

Cost per freight train a mile, $1.058 of a dollar.

1877–'8. Cost per total train a mile, [illegible] of a dollar.

Cost per passenger train a mile, [illegible] of a dollar.

Cost per freight train a mile, $1.489 of a dollar.

Counsel for defendant objects to all the above.

Q. 25. I asked you, Gen. Harding, to-day for the reports of the St. Louis, Iron Mountain & Southern Railway Company to the commissioners, for 1880; please state what you said to me.

Objected to, as incompetent and irrelevant; whatever passed between the gentlemen has no force.

Mr. Glover: He is a public officer, and I asked him if he could give me any report of the company, and if I had asked him that you would have objected to it, as leading; what do you know of any report by the St. Louis, Iron Mountain and Southern Railway Company to the railroad commissioners of the State of Missouri, for the year 1880? Did they ever make any?

A. No; none of the roads ever made any for 1880 yet; they won't be made until April, for 1880.

Q. 26. They were due last August?

Defendant's counsel objects.

Q. 27. Mr. Whitfield: Has the St. Louis, Iron Mountain & Southern Railway Company made a report for the year 1879 to your office?

A. They sent a copy of their prepared report of the president to the stockholders; they made no report as the law requires.

Defendant's counsel objects, as incompetent and irrelevant.

Q. 28. Has that railroad made any report such as by law railroads are required to make to the railroad commissioners of this State for any year since the passage of that law?

625 Defendant's counsel objects, on the ground of irrelevancy and incompetency; besides, it is asking a judicial opinion of the witness as to competency of the report that the law requires.

A. The last report that was made by the St. Louis, Iron Mountain & Southern Railway Company to the railroad commissioners was made upon blanks furnished by the railroad commissioners; it was made for the year 1877, and I cannot say here whether the report was made fully or not.

Q. 29. You say that was the last one that was made?

A. I think so.

Q. 30. Have you examined that report that was made for the year 1877?

Defendant's counsel objects, as immaterial and irrelevant.

A. I have; yes, sir; I have seen it.

Q. 31. Does it report the expenses of running a train a mile; either a freight train or a passenger train a mile?

Defendant's counsel objects to anything that the report contains, as the report itself is the best evidence of what it does contain.

A. I don't think that the expense of running the trains are separated.

Q. 32. They are not separated?

A. I think not; it is my impression the expenses of trains are not separated.

Defendant's counsel objects to the answer, as incompetent and irrelevant.

Mr. Glover: I want to know whether what General Harding called a report of the St. Louis, Iron Mountain & Southern Railway Company was addressed to the railroad commissioners of the State of Missouri, or whether it was a pamphlet which was addressed to the stockholders by the president and directors?

A. The last report sent in by the St. Louis, Iron Mountain & Southern Railway was a report of Thomas Allen, president, to the stockholders.

Q 33. Now, when was the last report which was addressed to the railroad commissioners? What is the date of the last report which you have in the railroad commissioners' office addressed to the railroad commissioners of the State of Missouri?

626 A. I cannot state the date exactly, but I think the last report there is for the year 1877, received at the office in the spring of 1878, or during the year 1878; I do not know what time; I could tell at the office; it is of record there.

Q. 34. After that date you received a pamphlet purporting to be a report of the president and directors of the St. Louis, Iron Mountain & Southern Railway Company to the stockholders of that company? A. Yes, sir.

Q. 35. But it was not addressed to the railroad commissioners? A. No, sir.

By Mr. Whitfield: Have the directors of the railway company, which is the defendant in this suit, made such a report to the railroad commissioners of the State of Missouri as is provided to be made by section 15 of article 12 of the constitution of the State of Missouri?

Defendant's counsel objects, as incompetent.

A. They have not; I might say neither has any company in the State, for that matter.

Objected to.

Q. 36. Have they assigned any reason to the board of commissioners for not making the reports? A. No.

Q. 37. Have the directors of the railroad company, which is the defendant in this suit, made to the railroad commissioners of the State of Missouri any report for the year 1878 or 1879?

Objected to, as irrelevant and incompetent.

Mr. **Whitfield**: I call attention to the fact, if the directors have made to the railroad commissioners—I do not ask if the railroad company, or if the president has, but whether the directors of the defendant railway company have made any report for these years to the railroad commissioners of this State? A. No, sir; they have not.

Q. 38. Has this defendant railroad company made to the railroad commissioners of the State of Missouri the reports provided to be made by the revised statutes of Missouri, 1879, sections 841 and [illegible], for the year 1878-'9, or 1880?

Defendant's counsel objects, as incompetent.

A. They have not—I was going to say, after the passage of the act of 1878, they were not required to, in the opinion of the railroad commissioners; no blanks were sent out to them until April.
I was going to say the two sections of law were in con-
627 flict, and we asked advice about that of the attorney general
I think; I am not certain about that, we asked legal advice and were informed that the section which was of the latest date repealed the other one in effect, they being in conflict; the one passed the last took precedence, and under that we acted.

Signature waived.

At this point the further taking of testimony in this case was adjourned until Wednesday, January 12, 1881.

St. Louis, Wednesday, January 12, 1881.

Parties met pursuant to adjournment, and the taking of testimony was resumed as follows:

George C. Arnoux, sworn on the part of the plaintiff, testified as follows:

Direct examination by S. T. **Glover**, Esq.:

Q. 1. Mr. Arnoux, what is your present employment?

A. I am manager of the freight department of the Adams and Southern Express Companies at the Union Depot.

Q. 2. Do you know anything about the way in which the Southern Express Company collects express matter about the city? If so, state how it is done.

A. It is done by wagons under the custom of the express service. Persons hang call cards out, and drivers call for freight.

Q. 3. How many wagons do the Southern Express Co. use? A. Sixteen.

Q. 4. How many horses?

A. I think there are thirty-four horses all told, or thirty-six horses; I disremember the exact number.

Q. 5. In the use of the Southern Express Co.? A. Yes, sir.

Q. 6. At what place? A. St. Louis.

Q. [7.] Where are those horses kept? A. At the stables of the Adams & Southern Express Companies, Seventh and Biddle.

Q. 8. How long has the Southern Express Company been using those horses in its business? A. I disremember the date.

Q. 9. I don't care about the exact date; can you state whether they have been so using those horses during the whole of the year 1880? A. Yes, sir.

Q. 10. And how many years back? A. Several years back.

Q. 11. When did your connection begin with the Southern Express Co.?

628 A. The 17th of December, 1877, this last service; I have been associated with them before.

Q. 12. Do you know what has been the condition of business between the Southern Express Company and the St. Louis, Iron Mountain & Southern Railway Company?

A. During the period since June 1st, 1880?

Defendant's counsel objects, as irrelevant and incompetent.

A. The condition has been one of unpleasantness.

Defendant's counsel objects, that the case cannot be tried by a man's feelings.

Witness: (Continuing.) We have been subjected since the 14th of July to vexations and annoyances and impediments in the progress of the Southern Express Company's business.

Defendant's counsel objects.

Q. 13. Go on and state the facts now so that the court may see what you mean.

A. Articles of merchandise, that would be in a compact body that had such an article being presented to us by the public at large, we would never have questioned its contents——

Counsel for defendant objects, as not responsive to the inquiry, and as immaterial.

Witness: (Continuing.) These articles of merchandise, whether they be contained in boxes, sacks, or packages, the custom of the Southern Express Company is to receive——

Counsel for defendant interposes an objection, on the ground that whatever the custom of the Southern Express Company is is immaterial and irrelevant.

Q. 14. Go on and state.

A. Would be received by the Southern Express Company [illegible] in a condition to be shipped.

Q. 15. What about it?

A. A sack of merchandise would be tendered to the St. Louis, Iron Mountain Express Company's representative at the Union Depot, and having the respective address of the consignee and the destination and weight upon it, and legal tender will be made for its transportation; money has been offered for its prepayment previous to the departure of this sack, and flatly refused.

Q. 16. Who tendered it? A. I myself tendered legal money.

Q. 17. Begin with the tender of the sack?

629 A. I tendered a sack addressed to a respective consignee and destination; it would be properly way-billed on our way-bills in my office at the Union Depot.

Q. 18. Who did you tender it to?

A. One regresentative was George Briggs, representative of the Iron Mountain Express Company.

Q. 19. What was his capacity?

A. He was sent there as scrip clerk to take a record of all goods put in the express car.

Q. 20. How do you know he was acting as a scrip clerk for that road?

A. He was brought there by Mr. Aikin, general superintendent, and Mr. Vary, agent.

Q. 21. Tell what took place; tell what you tendered in the shape of freight, if anything; what you tendered in the shape of prepayment, if anything, and what Mr. Aiken or Mr. Briggs said, if anything?

A. We would tender this sack of merchandise; the weight would be upon it——

Q. 22. You say "we" would? A. We did.

Q. 23. "We tendered a sack of merchandise?" A. Yes, sir.

Q. 24. With the weight upon it? State what was the fact.

A. And it was flatly refused, although a tender of money was offered for its pre-payment.

Q. 25. How much?

A. According to the tariff that would be prescribed by our tariff to that place; of course different tariffs to different points.

Q. 25. Whose tariff; you tendered according to whose tariff? A. The agreed tariff of the Iron Mountain Express Co. and the Southern Express Co.; the tariff of the Iron Mountain Express Co. we would pay.

Q. 26. What did the man who was acting for the St. Louis, Iron Mountain & Southern railway say?

A. He demanded me to open that sack, and take out those packages that were in it, and required me to itemize each name and destination.

27. Q. What do you mean by requiring you to itemize?

A. They wouldn't accept.

Q. 28. I know you did something, and they wouldn't accept; what was the specific thing; what was this itemizing?

630 A. They were the packages addressed.

Q. 29. I know; did he want you to make a list?

A. Yes, sir.

Q. 30. Of what? A. Of all these packages in there.

Q. 31. And do what with it? A. Give it to him.

Q. 32. What did you do? A. I did so, under protest.

Q. 33. How long did that take you? A. It delayed our general business on account of having the clerks and labor force there to do as he required; it took them from other portions of the building; it required us to have an additional force to do that work.

Q. 34. What additional expense, if any, was the Southern Express Company put to by this demand for itemized lists?

A. Under these requirements my force has been additional.

Q. 35. Additional to what extent; was it one or two clerks, or three or four, or how many?

A. You may say there has been an addition of one clerk and one porter in the office; I was obliged to devote the labor of one porter exclusively for that specific duty.

Q. 37. How long did this demand for itemizing the packages which the Southern Express Co. asked to be carried upon the St. Louis, Iron Mountain & Southern railway continue?

A. It continued daily from the 14th of July to the rendering of the decision of Judge Treat; I disremember the date, some time in November.

Q. 38. Rendered what decision?

A. The modification of the injunction.

Q. 39. What was the expense per day, added to the outlay of the Southern Express Co., created by this demand for itemizing lists between July 14th and the date of the modification of the injunction order?

A. I could not answer that directly, because we could utilize those two men in performing other duties after the work was done.

Q. 40. How much of additional work was caused by the requirement to itemize the contents of the boxes, trunks, or packages, or whatever they went in—sacks; and making lists; what part of one clerk's labor per day would it take?

Defendant's counsel objects to all this, on the ground that it is immaterial, incompetent, and irrelevant.

631 A. Each train going out requires his attention.

Q. 41. Will you sum it up, and give the best answer you can?

A. You may say he contributes an hour or two hours and a half on each run, according to the size of it.

Q. 42. How many runs were there?

A. There were two trains out in the morning, and one train out at night?

Q. 43. That is three?

A. Three trains. We had to use a man for the purpose; it might not be the same man every day.

Q. 44. Can you estimate how much of a day's clerk hire, of that additional clerk, would be taken up through this demand for itemized lists of contents?

A. I could not; we have had so many different sacks.

Q. 45. You can't do it? A. No.

Q. 46. When those itemized lists were demanded, what did you do? A. I complied with this compulsory act.

Mr. THOROUGHMAN: You did it under protest, I understand you? A. I did it under protest.

Q. 47. Mr. GLOVER: What charges did the railroad make for carrying that express matter?

A. They charged us for the packages in the sacks at that time; for each package that was in those sacks they charged us the same that we would exact from the public, and what they would exact from the public.

Q. 48. I don't understand what you mean by that, will you explain; you say "we" would?

A. For instance, they charged the public 25 cents on a package; that would be our tariff; they would charge us 25 cents.

Q. 49. How much was allowed, if anything, for bringing that express matter to the road?

A. In what respect, how much was allowed? I don't get the——

Mr. GLOVER: I can't tell you.

Mr. THOROUGHMAN: I will admit nothing was allowed. We will admit right there that no allowance was made for any service for bringing matter to the train, any more than you allow to the public for bringing it to your office.

632 Q. 50. During that period of time, to what period of time was this demand for itemized lists of packages contained in your boxes, trunks, sacks, continued on the part of the railroad company?

Mr. THOROUGHMAN: He answered from the 14th of July until the order was modified.

Q. 51. After that time; after the modification of the injunction order, will you state what the course of things has been in the business of the Southean Express Company and the St. Louis, Iron Mountain & Southern railroad?

A. Yes, sir. We put those packages in sacks, and they would accept them, and charge us three rates.

Q. 52. From what date did that charge of three rates continue?

A. From the date of the order of the modification of the injunction up to the present time.

Q. 53. Had you any conversation with the railroad officials at the time of the three rate charge about the reason of it, or the wherefore of it? A. I had not.

Q. 54. When you say they charged you three rates, what is that three rates?

A. Three rates of their tariff. To the point of destination that those sacks would be addressed to.

Q. 55. What did those sacks contain, if you know, upon which these charges of three rates were made?

A. They contained packages.

Q. 56. Did you always know, in every case, what the sacks contained?

A. Yes, sir; I was present when they were sacked.

Q. 57. Does the Southern Express Co. know the contents of packages received by it to be shipped on the St. Louis, Iron Mountain & Southern railroad?

Defendant objects, as immaterial and irrelevant.

A. They do not.

Q. 58. Why do they not?

A. We never demand it from the public to know. A man ships forty law books in a box. We wouldn't ask him if he had forty law books in the box.

Q. 59. What is the condition in which packages are received by the Southern Express Company to be shipped upon the St. Louis, Iron Mountain and Southern railroad?

633 A. They are accepted from the public if in a condition to be transported.

Q. 60. Do they all come to your office in the same condition? A. Yes, sir.

Q. 61. Are any packages ever brought to the Southern Express Company sealed by the owners? A. Yes, sir.

Q. 62. Are any brought unsealed? A. Yes, sir.

Q. 63. Do they all come there in the same condition?

A. It is according to the class of matter; probably a package would come for transportation which the house itself would seal, a box of wine may have a lead seal on it. A package that was supposed to be valuable would have the sealing-wax seal. A box of dry goods would be nailed up.

Q. 64. How many occasions, if you recollect, were charges made three times the amount of ordinary express rates?

A. It has been done daily since the modification of the injunction.

Q. 65. Will you state to me whether the officials of the express department of the St. Louis, Iron Mountain and Southern Railway Company claim to open packages which the Southern Express Company has received sealed?

Defendant objects, as leading.

A. I cannot say as to the word sealed—whether the package was sealed.

Q. 66. Well, closed? A. Closed.

Q. 67. Will you answer?

A. An attempt was made by a representative——

Mr. THOROUGHMAN: Don't state any attempt; was that done?

A. It was done to pry into packages there with his fingers to see its contents.

Q. 68. State what was done.

A. That was done; he pried into packages with his fingers.

Q. 69. Who did that?

A. The scrip clerk of the Iron Mountain Express Company tried to ascertain the contents by prying his fingers through the packages.

Q. 70. What was done; did he succeed or not?

A. He did not; we protested against such action.

Q. 71. Did it stop there at your protest? A. Yes, it did.

Q. 72. What was done with the package?

634 A. The package went on to the destination.

Q. 73. Did it go aboard the Iron Mountain railroad?

A. Yes; it went aboard the Iron Mountain train.

Q. 74. Can you tell the examiner from what, and how you had received the package that the scrip clerk attempted to open?

A. I received the package from the United States Express Company; it was addressed to the consignee, at Little Rock.

Q. 75. How was it received; in what condition?

A. It was received in good condition, and in their regular course of transfer.

Q. 76. Was it an open or closed package?

A. It was a closed package.

Q. 77. Do you know anything in regard to the method pursued by the St. Louis, Iron Mountain & Southern Railway Company express department in respect of weights?

A. They require us to give the weight of every article that we ship.

Q. 78. Do you know anything more than that?

A. Nothing, I believe.

Q. 79. Mr. Arnoux, state what you know, if anything, in respect of the cost of transportation of freight; by that, I mean common freight upon the St. Louis, Iron Mountain and Southern Railway Company, during the last two years.

A. The last two years I know nothing, on account of my severance in railroad circles; I have not been associated in railroad business in that time. Prior to that time I was associated with the Iron Mountain railway.

Q 80. Were you cognizant of Iron Mountain railway affairs in respect of freight?

A. I was associated with the Iron Mountain railway in 1876 and 1877.

Q. 81. What did you know then?

A. I was contracting agent for them.

Defendant objects, as irrelevant and incompetent.

Q. 82. At what time were you contracting agent for the Iron Mountain railroad?

A. In the years 1876 and 1877.

Q. 83. Contracting agent for what?

A. For freight.

635 Q. 84. If you know anything about it, will you go on and tell me about it, without my asking you so many questions?

A. What particular question?

Q. 85. About the cost of freight; if you know anything?

A. They base their classification of matter at the cost of one cent per ton per mile.

Q. 86. What do you mean by "they"?

A. The Iron Mountain Railroad Company.

Q. 87. How do you know that?

A. That was received by general instructions received from the general freight agent.

Q. 88. Don't stop there; go on and tell all you know about it.

A. *89.* That is the sum and substance of it.

Q. *90.* Who talked with you about it?

A. Mr. Frink, general freight agent; I didn't have to go every day to him to receive specific instructions.

Q. 90. You have not yet told that he gave you any?

A. He gave me instructions for the operation of the business.

Q. 91. Will you tell what they were, without my asking you, and state what was said to you by the officials of the company about freight and the cost of freight, if anything was said?

A. That is the cost; that is the only thing I can say; I cannot say there was any conversation passed between myself and Mr. Frink.

Q. 92. Will you tell what was said to you?

A. Nothing was said in general.

Q. 93. What was said to you at all?

A. Mr. Frink told me, as contracting agent, he being general freight agent, he didn't want me to carry any matter less than one cent per ton per mile on his road, as that was the basis of transportation.

Counsel for defendant objects to what Mr. Frink said, as immaterial and incompetent.

WITNESS: I could not give any specific interviews I have had with Mr. Frink.

Q. 94. What did he say about the cost of transportation per mile?

A. He said that was the basis of the cost of transportation per mile; one cent per ton per mile on freight.

636 Q. 95. What other instructions did he give you, if any?

A. Nothing outside the general instructions.

Q. 96. You have never told the general instructions; what were the general instructions?

A. He defined my duties as contracting agent.

Q. 97. That don't amount to anything; what did he tell you to define your duties?

A. He told me nothing further.

Q. 98. You have not said he told you anything yet. (No answer.)

Cross-examination by Col. THOROUGHMAN:

Cr.-Q. 1. What is your age, Mr. Arnoux?

A. Thirty-eight years old to-day, sir.

Cr.-Q. 2. You are manager of the Southern Express Co., and the Adams, also, at the Union Depot? A. Yes, sir.

Cr.-Q. 3. Your duties confine you at that place?

A. Yes, sir.

Cr.-Q. 4. You don't go out on the road at all? A. No, sir.

Cr.-Q. 5. Do you attend to the loading of freight?

A. I superintend it; I supervise the entire business.

Cr.-Q. 6. You have stated to Mr. Glover that the Southern Express Company has sixteen wagons, thirty-two, thirty-four, or thirty-six horses, you don't know exactly which?

A. No, sir; they are in use for that service.

Cr.-Q. 7. They are in use; will you tell us whose property they are? A. I could not answer that; I don't know.

Cr.-Q. 8. Don't you know they belong to the Adams Express Company?

A. I do not; I have never seen a bill of sale of them to the Adams Express Company.

Cr.-Q. 9. You might know it without having seen the bill of sale, might you not?

A. The horses are sent to me for the transaction of my business; I utilize them in it.

Cr.-Q. 10. Whose property they are, you don't know?

A. No.

Cr.-Q. 11. That is no part of your duty to know? A. No.

Cr.-Q. 12. Don't you know, from your general knowledge of the relations between the Southern Express Company and the
637 Adams, that those wagons and horses belong to the Adams Express Company? A. I could not answer that they do.

Cr.-Q. 13. Your books don't show any account of expenditures for this property that you know of?

Plaintiff's counsel objects to the witness stating what the books show.

A. They do not.

Cr.-Q. 14. You are now in the employ of the Southern Express Co. and the Adams? A. Yes, sir.

Cr.-Q. 15. And you stated you had been before this engagement? A. Yes; I was associated with them before.

Cr.-Q. 16. When was that?

A. Prior to associating myself with the St. Louis, Iron Mountain & Southern railway.

Cr.-Q. 17. What years? A. Dating back since 1859.

Cr.-Q. 18. Where?

A. In the city of St. Louis. I first associated myself with the Adams Express, 1st of March, 1870; continued with them until the year 1876, and then associated myself with the Iron Mountain railway until December, 1877, and then associated myself again with the Adams and Southern Express Co's.

Cr.-Q. 19. The impediments thrown in the way of transacting express business was, as you have stated before, in opening these sacks that packages were put in to be sent off?

A. That was one of the impediments. There were vexations and annoyances of many sorts, that if they were not done by the representatives of the Iron Mountain Express, our business would run very much smoother than now.

Cr.-Q. 20. You say that upon one occasion a young man tried to look into a box? A. A package.

Cr.-Q. 21. What was that, a trunk?

A. A package of merchandise closed up.

Cr.-Q. 22. Was it in a box?

A. An ordinary bundle, a package.

Cr.-Q. 23. Bound up with paper?

A. Yes; tied with string; compact.

Cr.-Q. 24. You say he tried to look at it to ascertain what it was? A. Yes; he had his hands in the bundle.

Cr.-Q. 25. All you know about anything of that kind was the one instance you named?

638 A. That was the only one single instance that I am cognizant of—that my attention was called to immediately.

Cr.-Q. 26. You saw what you have said? A. Yes, sir.

Cr.-Q. 27. You have said to Mr. Glover you didn't see any other attempt; you say this package was tendered, and they declined to take it? A. No.

Cr.-Q. 28. It was tendered, and they did take it? A. Yes.

Cr.-Q. 29. That package was taken, and it was not broken open? A. No, it was not.

Cr.-Q. 30. When was it you had this struggle there that you mentioned with Briggs and others?

A. That was prior to the 14th of July—from the 14th of July to the modification of the order of injunction; up to that time.

Cr.-Q. 31. Somewhere between those periods you had to struggle to get packages on the train?

A. Yes, sir; a protest was entered each day of the tender of these sacks of packages.

Cr.-Q. 32. That was a protest in words?

A. In words. "I protest against your receiving this freight in any other manner than I have tendered it." Those were about my words.

Cr.-Q. 33. It was simply a verbal message of that sort?

A. Yes, and a daily one.

Cr.-Q. 34. There was no expense attached to it?

A. It perhaps required me to protest.

Cr.-Q. 35. How do you receive these packages from the public?

A. We receive them as they are tendered.

Cr.-Q. 36. They are shipped in separate bills; A, B, and C bring them to your office?

A. A man may come to me with a package containing twenty boxes; he may have twenty different consignees in the package. We make no inquiry as to that fact.

Cr.-Q. 37. He brings you the package, and you receive it?

A. We give him a receipt.

Cr.-Q. 38. If three or four persons bring packages, how do you do?

A. If four parties came in with four packages, [illegible]
receipts.

639 Cr.-Q. 39. If any one brings a package he gets but one re-
ceipt? A. That is all.

Cr.-Q. 40. Suppose five different persons bring you five different packages of five pounds each, what would you do with them, put them in one package of your own, and then put them on the railroad train?

A. That was the manner in which we did.

Cr.-Q. 41. That was the thing the Iron Mountain railroad was objecting to, was it not?

A. I believe it was; but if those five gentlemen that came in with those five packages chose to put them in one package before me and address it to one consignee, I had no right to dictate that he shall undo it.

Cr.-Q. 42. If five different persons were to bring in five different packages, and they do it in one package, you receive it as one package?

A. You speak of them doing it before my face?

Cr.-Q. 43. That don't change the right to property, because it is one transaction? A. No.

Cr.-Q. 44. If five different persons bring each a different package going to the same consignee, what do you do as to giving them receipts and charging them?

A. We would charge according to the tariff.

Cr.-Q. 45. I mean would you charge for five separate packages, or would you put them in one package and charge for one package?

A. If they would come in here and request those five packages to be shipped to one consignee——

Mr. Thoroughman: What would you do?

A. We have a classification. The five parties would be charged for each package, each one.

Cr.-Q. 46. Would you make them into one package?

A. No, but we would combine the total weight and give the classification rate on the total weight.

Cr.-Q. 47. Suppose they brought in to you five different packages and said nothing about it?

A. Without their saying so—my instructions are to put those—for instance, five packages weighing five pounds each, would be twenty-five pounds. We have a classification. If a dollar a hundred, for 25 pounds the classification rate would be 25 cents, at the
rate of a dollar a hundred.

640 Cr.-Q. 48. So if five individuals bring a package each of
five pounds, you make it in one package?

A. We don't make it up in one package. We make it up in one weight, regardless of the separation.

Cr.-Q. 49. Suppose I come in there and bring you a package of five pounds and want to prepay it, what do you do?

A. I would take that package, not supposing there is another one coming.

Cr.-Q. 50. Suppose I bring to your office a package of five pounds and I want you to send it to Brown at Little Rock, and I want to prepay the charges?

A. I would charge you for that five-pound package there, supposing it would close the transaction.

Cr.-Q. 51. You charge me the full price for my package?

A. Yes, sir.

Cr.-Q. 52. Suppose that after, Col. Broadhead comes in and brings you a package of seven pounds going to Little Rock, what would you do with him?

A. If he would make the mention that was the full consignment, I should take it and charge per the rate.

Cr.-Q. 53. Suppose he said nothing?

A. It was supposed you are sending a package to a single individual and that his is to another.

Cr.-Q. 54. Suppose Mr. Glover would come in with a package of ten pounds? A. Likewise.

Cr.-Q. 55. The same course would be taken with Mr. Glover. Suppose Mr. Agee came in with a package of 20 pounds, how would you do with him?

A. I would collect these of course, on the floor, put them together, make one classification, if they were to one consignee.

Cr.-Q. 56. How would you regulate the matter as to what has passed between you and I, Mr. Glover and Mr. Broadhead?

A. If you will come and see my books I will illustrate.

Cr.-Q. 57. We want it illustrated on the record.

A. We do that.

Cr.-Q. 58. What do you do with me; how would I get anything back from you?

A. The consignee would reap the benefits.

Cr.-Q. 59. How would the consignee get anything?

A. It would be as regards the circumstances of the case.
641 You coming with a package and shipping it, we don't know
that another one is following; it is not our duty to make that inquiry.

Cr.-Q. 60. Are they not simply treated as one package?

A. I was going to illustrate to you; here we are with our 16 wagons, parading the streets promiscuously from house to house; these packages come down there; there may be 16 boxes and 14 bundles for John Jones, from 25 houses in St. Louis; John Jones receives the benefit of the rate—the combined total weight.

Cr.-Q. 61. I ask you if this is not the simple truth, that if five gentlemen come in there, each bringing a different package, all bound for Little Rock, and each prepaid, how could you regulate anything with the consignee, because there is nothing due from the consignee to you?

A. You say to one consignee?

Cr.-Q. 62. Yes.

A. If you choose to ship them separately as isolated cases, I would charge you single rate.

Cr.-Q. 63. Full rate?

A. Yes, on each one. If you made the request that they should be put down as cheaply as possible, I would give you the benefit of it.

Cr.-Q. 64. Let me ask how there could be any such request made by anybody; I don't see either one of the other gentlemen take packages on the day I do?

A. During all the years of my experience I have never seen a parallel case.

Cr.-Q. 65. I will ask you if, in a case of that sort, you do business different from the Iron Mountain railroad in its express department, as far as you know?

A. We do vastly different; we don't exact what they exact from us.

Cr.-Q. 66. I ask you with respect to its system of charging?

A. I know nothing about them.

Cr.-Q. 67. You have a good deal of feeling in this case?

A. In what respect?

Cr.-Q. 68. I ask you if you have got a good deal of feeling, bias, prejudice? A. Not by any means. Why should I?

Cr.-Q. 69. I ask if you have? I want you to answer my questions. A. I have not by any means.

642 Cr.-Q. 70. You say you have been obstructed in your business? A. Considerably so.

Cr.-Q. 71. And has that made no feeling in your breast at all? A. Nothing malicious, by any means.

Cr.-Q. 72. Have you any feeling not malicious?

A. If you occupied the same position I do——

Mr. **Thoroughman**: Don't illustrate it to me that way; confine it to your position; you did not, as I understand you, make any definite answer at all as to the additional expense you had incurred by reason of hiring this porter and clerk down there to Mr. Glover?

A. I didn't give the amount. We are required to have additional force under this requirement.

Cr.-Q. 73. I ask did you state to Mr. Glover the amount of additional expense you incurred? A. I did not.

Cr.-Q. 74. What have you done with that porter and clerk?

A. They are there as other porters and clerks, doing duty in the building.

Cr.-Q. 75. You have continued them right along?

A. Yes, sir. We increase and decrease our force in the fluctuations of business.

Cr.-Q. 76. Did you have them before the time spoken of in your examination-in-chief, these men?

A. I think the porter was hired additional since; we may have had a clerk for filling up the Iron Mountain——

Mr. **Thoroughman**: I don't want what you thought. What did you do as to hiring the porter and clerk; did you hire them expressly for that business?

A. They are doing almost as much now as before the court made the change.

Cr.-Q. 77. Now? A. Yes.

Cr.-Q. 78. That is not by reason of obstruction, because you say the modification of the injunction stopped that?

A. Am I not obliged to sort and designate each one of these packages? I don't put a package addressed to Little Rock in a sack addressed to Texas.

Cr.-Q. 79. You see the difficulty of getting along with a man like you, persisting in making me the witness; I am not the witness. I want to know whether the fact is that you employed these men for this business, and when the injunction was dissolved discharged them? A. No.

643 Cr.-Q. 80. These packages that the Iron Mountain railway officers insisted upon seeing were packages of like character to those I have talked to you about?

A. Received from the public, yes, sir.

Cr.-Q. 81. And for which you have charged as stated heretofore? A. Yes, sir.

Cr.-Q. 82. You complain they were charging you as much as you charge the public? Yes, sir.

Cr.-Q. 83. Giving you no chance as middle men between them and the public to make any money?

A. No; we were doing the work and they were receiving the compensation.

Cr.-Q. 84. You were asked by Mr. Glover with reference to carrying these packages to the train; do not the public bring to your office on Fifth street a good deal of this matter?

A. Yes, sir.

Cr.-Q. 85. Some of it is brought to your office at the depot in case a person is in hurry, is it not? A. Yes, sir.

Cr.-Q. 86. They are then made up and put on the train right from your office? A. Yes, sir.

Cr.-Q. 87. Now, you have been in and out of the express business since 1859? A. Yes, sir.

Cr.-Q. 88. You have some experience in it, have you not?

A. A little.

Cr.-Q. 89. I will get you to state if when a person brings a package himself you make any allowance to him for bringing it himself? A. None in the least.

Cr.-Q. 90. Sir? A. No, sir; we do not.

Cr.-Q. 91. Have you ever heard a case of the sort?

A. We charge nothing for getting it; still we are at great expense in doing it.

Cr.-Q. 92. That is a thing to come from the lips of your lawyers; don't answer in that way any more. Now, Mr. Arnoux, you state that you charge the public nothing; have you ever known a case in which the public was charged for going out and gathering up this property to be shipped by express at any time? A. I am not aware of it.

Cr.-Q. 93. Did you ever know where another express company was charged who brought you goods? A. No, sir.

644 Cr.-Q. 94. Did you ever know a case where an allowance was made to another express company that brought you goods to be forwarded by you?

A. We exchange with each other every day.

Cr.-Q. 95. Did you ever know of an instance where another express company was allowed for services for bringing to your office express matter to be forwarded?

A. No, sir; but I was charged quite recently, the other day, for two teams $12 a day, to accommodate the public, to do this business for the public.

Cr.-Q. 96. Will you answer my question? Do you know of a single instance where the Southern Express Company has charged another express company for carrying to it business, or allowed it for bringing business to the Southern Express Company?

A. No; I don't know whether they have charged anybody.

Cr.-Q 97. Do you know whether they have allowed anybody for bringing business to it?

A. No, sir. I can say this, if a baggage wagon should go by and take a trunk from a man's office and he says he has a charge of 50 cents for hauling that trunk to my office, we examine the trunk, see its condition, and I advance him 50 cents for his services for bringing it to my office.

Cr.-Q. 98. You advance him 50 cents? A. Yes, sir.

Cr.-Q. 99. How do you get the 50 cents back?

A. It is put on the way bill as advanced charges and the consignee pays it.

Cr.-Q. 100. You say the other day you paid out $6 a piece for two wagons to accommodate the public. A. Yes, sir.

Cr.-Q. 101. How did you get your pay back for that accommodation of the public?

A. That went right square into the expense account; was a dead loss to the company.

Cr.-Q. 102. Don't you know this that this expense is incurred by all express companies with the view of accommodating the public, so that the public will patronize their line of transportation? A. That is a matter of question.

Cr.-Q. 103. How will you answer it?

A. We are all trying to serve the public the best way we possibly can.

645 Cr.-Q. 104. Isn't that the way you get your pay back?

A. By future patronage of the public; that is, a future expectation; the question of dollars and cents don't right itself right there.

Cr.-Q. 105. It is a venture; you want to oblige the public, therefore you invested in the public to the extent of $12 the other day.

A. Yes, two or three days; $12 it was a day for two wagons.

Cr.-Q. 106. How many days? A. Two days.

Cr.-Q. 107. $24? A. $24.

Cr.-Q. 108. Who was the man to whom you paid it?

A. His name is Fawcett, of the Accommodation Transfer Company.

Cr.-Q. 108 City?

A. Yes, sir. He charged us $12 a day for those two wagons.

Cr.-Q. 110. Where is his office? A. I am unable to answer that.

Cr.-Q. 111. He is the young man, is he not, that testified in this case at the instance of the Southern Express Company the other day? A. I don't know that.

Cr.-Q. 112. He is the manager of Fawcett's Express Transfer.

A. He is a man that has wagons in town; I don't know what he does; I only know his wagons were there.

Cr.-Q. 113. You spoke of three rates being charged on certain matter sent over the Iron Mountain road; what do you mean?

A. Three rates of their rate; so much a hundred pounds to the point that these goods were addressed.

Cr.-Q. 114. Do you mean common freight rate or tariff?

A. Tariff.

Cr.-Q. 115. Do you mean express tariff or common freight?

A. Express tariff; three times their tariff. Where the ordinary charge was $2.00 to Little Rock they charged us $6.00 a hundred.

Cr.-Q. 116. That is as much as you know about this case upon that subject?

A. I was compelled the other day to weigh the messenger's box, the box he has on the train; it weighed 7 pounds, and his chair.

Cr.-Q. 117. And his chair? A. Yes sir.

646 Cr.-Q. 118. You have been paying on chairs and everything you have shipped since this litigation began.

A. I don't know, since the litigation began; I don't know how long.

Cr.-Q. 119. A box weighs something.

A. These boxes weighed 7 pounds.

Cr.-Q. 120. And the chair weighed something.

A. Eight pounds.

Cr.-Q. 121. And the safe.

A. 112 to 120 pounds; I was a little afraid they were going to weigh the messenger.

Cr.-Q. 122. We don't intend to do that because we charge him full fare rate, and we intend to do it; we don't intend to weigh him. You spoke of a package of 40 law books; there was nobody wanted to see those books, was there? A. No.

Mr. **Glover**: He said "if" they were brought.

Cr.-Q. 123. Nobody wanted to see those at the depot?

A. No.

Cr.-Q. 124. You were asked what was said by Mr. Aikin and Mr. Frink and others during the examination-in-chief; I want to ask you what was said by Briggs and others there in reference to these small packages; what did they say in reference to them, why they wanted to see them?

A. They didn't give any particular reason any further than they wanted the address of the consignee and the address of each.

Cr.-Q. 125. Didn't they say they wanted to know the value of the articles, to know what they were carrying?

A. No, there was nothing ever spoken regarding the question of value.

Cr.-Q. 126. They never said anything to you about the Southern

Express Company trying to smuggle valuables into their cars by means of putting them in sacks and safes and boxes. A. No.

Cr.-Q. 127. They made no complaint of that sort.

A. None to me; I have had very little conversation with these gentlemen.

Cr.-Q. 128. Suppose a man comes to you with a package done up as merchandise as ordinarily done up, what do you do with it?

647 A. Give him a receipt for it; we ask him the value; that is our custom; if he says it is worth five dollars, we insert that in the receipt; if he says he does not know, we insert "value asked and not given."

Cr.-Q. 129. Suppose a man comes with a package weighing less than a pound, and tells you that it contains a diamond ring worth five thousand dollars, what would you do?

A. I wouldn't take it; I would send him to the money department.

Cr.-Q. 130. You don't know what your custom is in that regard? A. Certainly.

Cr.-Q. 131. What is it? A. I wouldn't accept it.

Cr.-Q. 132. What would you do?

A. If he would come to the office and tell me he had a diamond worth five thousand dollars in a parcel weighing a pound, I would direct him to the money department. If he said he didn't know what was in the parcel, I would give the man a receipt; we don't know the contents.

Cr.-Q. 133. Suppose a man were to come to you with a diamond ring done up in a package weighing less than a pound, so you could not see it at all, still you knew the fact it contained a diamond ring worth five thousand dollars, and he declined to give you the value, what would you do?

A. If I knew the package contained a diamond ring I would not accept it. There would be a conversation pass between us. I would have it understood whether there was one or not.

Cr.-Q. 134. I say in my question you have absolute knowledge that there is a diamond ring there, worth five thousand dollars, that you knew there was a diamond in it, and he declined to state what it was worth, what would you do?

A. The company would expect me to have that discussion.

Cr.-Q. 135. What would you do?

A. I wouldn't accept it if I knew there was a diamond ring in the package.

Cr.-Q. 136. Now, if I understand you rightly, it was the small packages that were put in sacks and boxes that the Iron Mountain Express Department wanted you to give them a list of? A. Yes.

Cr.-Q. 137. What motive prompted them to do it; you won't answer it? A. I didn't say I wouldn't answer.

Cr.-Q. 138. Will you?

648 A. I don't know what motive prompted them any more than desiring to benefit themselves; that was their motive, of course.

Cr.-Q. 139. They didn't tell you their motive was to ascertain the value of things, so they might charge according to the risk they were taking? A. No.

Cr.-Q. 140. Nothing like that? A. No.

Cr.-Q. 141. What was in that package that you say this man tried to look into?

A. I don't know. We wouldn't have allowed any employee in our office to do that act.

Cr.-Q. 145. I don't ask you what you would allow; I ask if you knew what was in that package?

A. We don't know what the contents of that were.

Cr.-Q. 143. What do you do in reference to receiving packages simply bound up and those sealed up with sealing-wax; do you make any difference in your management of them?

A. No; nothing in particular besides the general care of the business; if I saw a very small package lying around that department I would naturally pick the package up and put it where it was a little more likely to be under observation.

Cr.-Q. 144. Don't you bestow more attention and care upon an article of great value than you do on a mere package of goods that is of much less value?

A. No; if you bring me in a box of dry goods——

Cr.-Q. 145. Mr. Thoroughman: That will do; you don't. Now, do you allow in making up your charges the element of value to compose any part of what you charge?

A. Yes; over fifty dollars.

Cr.-Q. 146. You say you were connected with the Iron Mountain railroad in 1866 and 1867?

A. 1876 and 1877; a portion of 1877, up to November, 1877.

Cr.-Q. 147. What were you contracting for during that time for the road?

A. For the Green Line territory of the Iron Mountain railroad. I was contracting agent, contracting for freight. I went all over the city.

Cr.-Q. 148. You mean you were contracting for freight to be shipped over the road? A. Yes, sir.

Cr.-Q. 149. You know from what you received from Mr.
649 Frink that the rate then was one cent per ton per mile for hauling? A. That was the basis of the cost of transportation.

Cr.-Q. 150. That was the basis spoken of to you?

A. It was in the general instructions.

Cr.-Q. 151. What it actually was you don't pretend to say?

A. I know not.

Cr.-Q. 152. Are you not speaking of one cent per ton per mile for common freight? A. Common ordinary freight.

Cr.-Q. 153. That went on a freight train?

A. It would be immaterial; if they were to class the matter the profit would be much greater.

Cr.-Q. 154. I want to know this fact: Do you mean to say now that was common freight contradistinguished from express matter that goes on passenger trains? A. Yes.

Cr.-Q. 155. You mean common freight that don't go on passenger trains? A. Common freight as classified.

Cr.-Q. 156. You mean to say the charge charged by Mr. Frink was on common freight, and not freight sent by express on passenger trains?

A. Yes, sir; the lowest possible tariff was based on that.

G. C. ARNOUX.

F. H. MILLER, sworn on the part of the plaintiff, testified as follows:

Direct examination by Mr. GLOVER:

Q. 1. Where do you reside?

A. I reside at 1313 Emmet street.

Q. 2. What is your business? A. Commission business.

Q. 3. At what place? A. 922 Broadway.

Q. 4. How long have you lived in St. Louis?

A. I have lived here about 30 years.

Q. 5. How long have you been in this business—commission?

A. Been in business for myself nearly two years; I was in with Wetmore about twelve years altogether.

Q. 6. Have you done any freight business or express business over the St. Louis, Iron Mountain & Southern railway?

A. Yes, sir.

Q. 7. For what length of time past?

A. We have been receiving stuff over that road ever since they have been in existence.

650 Q. 8. Have you been receiving since last June?

A. Yes, sir.

Q. 9. And up to this time? A. Yes, sir.

Q. 10. Have you done any other than common freight business; an express business as well as common freight?

A. Nothing, only express business; we get some goods by freight.

Q. 11. To what place to and from which have you conducted your express freight business down South?

A. We have shipped some things to Hot Springs.

Q. 12. Little Rock? A. Little Rock.

Q. 13. New Orleans?

A. No; down to Fulton, Ark., and Texarkana.

Q. 14. What arrangement have you had in the transaction of this business?

A. We have not had any in particular, only in shipments to Hot Springs.

Q. 15. Have you bought any passenger fare tickets?

A. Yes; that is, Mr. Cornish, our traveling man, he bought one in the early part of May, I think it was.

Q. 16. What kind of express business have you been doing over that road? A. We have been receiving stuff.

Q. 17. What sort of stuff?

A. Berries, peaches, game, venison, game of all kinds, feathers, and eggs and hides; everything.

Q. 18. This gentleman of whom you speak who bought a ticket, his connection with your house was what?

A. He travels for us.

Q. 19. He travels for F. H. Miller & Co., which is your house? A. Yes, sir.

Q. 20. How much did he pay for the ticket?

A. I don't remember what he paid for it; I know he got it less than the regular fare; what the exact amount was I don't know.

Q. 21. Do you know how many mile ticket it was?

A. I don't remember what it was; it is entered on the books; I can find out well enough.

Q. 22. What is his name? A. George F. Cornish.

Q. 23. He purchased it on account of the house?

A. Yes, sir.

651 Q. 24. For less than the regular amount?

A. I think it was a little less than the regular fare; what the regular fare was I don't know; he said at the time he got some little deduction.

Q. 25. Were you then doing express business over the Iron Mountain railroad?

A. No, we hadn't got anything over that road then.

Q. 26. In your express dealings over the Iron Mountain railroad what arrangement had you then in respect of weights?

A. I had no arrangement whatever only to Hot Springs.

Q. 27. What was that?

A. That was to allow me to mark the package less than whatever a barrel weighed. If the barrel weighed 20 or 25 pounds, we just marked on it that much less; only marked it what the goods weighed. That is a common thing for all express companies to do if you ask them.

Q. 28. How much is the average weight of those barrels?

A. Some barrels would weigh 18, some 20, some 22 pounds.

Q. 29. Do I understand you to say you did not pay for the weight of the barrels?

A. We never prepay charges; the charges were paid at the other end.

Q. 30. The weight was minus the barrel?

A. The weight was minus the barrel. If a barrel weighed 25 pounds, and with the goods 150, we marked it 125.

Q. 31. Suppose you had not shipped with the express department of the Iron Mountain road, would you get that allowance? A. Would I get it from others?

Q. 32. Yes. A. I don't know; I did't ask Mr. Albright; I didn't ask any of the other agents; I have got it to other points from nearly every express company in the city.

Q. 33. What was the object expressed, if any was expressed, between you and officers of the Iron Mountain road, with whom you made those shipments, about the reasons of it?

A. I was told by their agent that they would allow me for the packages.

Q. 34. If you shipped over their road? A. Yes, sir.

Q. 35. Do you know whether any one made a representation to the people at Hot Springs that by shipping over the Iron Mountain express department this deduction of weight would be made to them?

652 A. I don't exactly understand your question.

Q. 36. Do you know whether any one caused it to be known to the people, or any of the people, about Hot Springs, that this inducement was given to ship over the Iron Mountain express department?

A. Yes, I think my man, Mr. Cornish, wrote that to the party he was shipping to, that packages would be marked less than their actual weight; that tare would be allowed for the barrels.

Q. 37. If the shipments were made over the Iron Mountain express department; do you know that fact was known to the public, to wit, that persons shipping through the express department of the Iron Mountain road would have the weight of the barrels taken off?

A. I don't know whether it was known to the public or not. I suppose anybody else could have got the same thing.

Q. 38. Do you know whether they did or not get it?

A. I don't know. It is a common thing for express companies to do that, if parties ship a great deal of goods, to allow for the packages, or for ice, or anything of that kind; to allow so much a barrel.

Q. 39. Do you know whether any new train, which did not run last spring, has been put on the Iron Mountain road to run since; whether the St. Louis, Iron Mountain & Southern Railway Company have started a new train within the last month or two?

Defendant's counsel objects, as incompetent and irrelevant.

A. I heard of one, yes.

Q. 40. Do you know whether such a train has been run of your own knowledge? A. Yes, I do.

Q. 41. Has anything ever been communicated to you, from any of the officials or employees of the Iron Mountain & Southern Railway Company, as to the exclusion of any person from that new train.

Defendant's counsel objects, as irrelevant and incompetent and leading, and besides the company could not be bound that way.

A. No, sir.

Q. 42. Have you had any communication from the St. Louis, Iron Mountain & Southern Railway Company, or any of 653 its officers or employees, in regard to the greater speed of that train and the inducement to ship over it, because the Southern Express Company was excluded from it?

Defendant objects, as leading, irrelevant, and incompetent.

A. No, sir; I never have.

Q. 43. Has any inducement ever been offered to you by the St. Louis, Iron Mountain & Southern Railway Company, or any of its officers or employees, as a reason why you should not ship over the Southern Express, and should ship over the express department of the Iron Mountain railroad?

Defendant objects, as leading, irrelevant, and incompetent.

A. Well, nothing in particular; only when Mr. O'Neil's agent was up here from Hot Springs he bought some goods from us, and I asked him what express I should ship it by——

Mr. **Thoroughman**: Don't state what O'Neil said.

Witness: I told him it did not make any difference to me, and it didn't to him either. Brown came along. I told him we were going to ship those packages; he said, all right. I said: "Will you allow the barrels off?" He said we might "mark off the packages, whatever it is, and it will be all right." That was just the fact.

Cross-examination by Col. **Thoroughman**, for the defendant:

Cr.-Q. 1. If I understand you, the habit of all express companies, where you have done business with them, is to take off your packages?

A. Yes, sir. They will always allow you to take something off for the package; or in packing with ice, allow something for the ice.

Cr.-Q. 2. Make a rational deduction for all this matter?

A. Yes, as a general thing.

Cr.-Q. 3. What has been done by the Iron Mountain Railroad Company is just what has been done by other express companies?

A. Yes, sir.

Cr.-Q. 4. So you don't mean to say that was an inducement to get you to do business with them? A. No, sir.

Cr.-Q. 5. I will get you to state if it was the same way with casks, boxes, &c., that you wanted returned to you; are they not always returned free; if you ship a crate, if the crate don't come back for nothing?

654 A. Express companies generally carry all "empties" free to regular shippers, such as chicken-coops, egg-cases, and such things.

Signature waived.

T. H. **West**, sworn on the part of the plaintiff, testified as follows:

Direct examination by Mr. **Glover**:

Q. 1. Where do you reside?

A. 2650 Washington ave., St. Louis.

Q. 2. Will you state your business?

A. I am in the cotton commission business.

Q. 3. Where is your place of business? A. Main street.

Q. 4. How long have you been in the cotton business?

A. I have been here since about the first of June.

Q. 5. What is the cotton business you are in?

A. It is just selling cotton consigned to me on commission; that is the kind of business I am doing; cotton commission business; there are several kinds of cotton businesses.

Q. 6. How do your consignments come to you; by what route and by what means?

A. They come by railroad generally, and some by river.

Q. 7. Some by the Mississippi, and by what railroad?

A. Come by the Iron Mountain principally; the Cairo Short Line some little, and a good deal by the M., K. & T., all roads tributary.

Q. 8. Have you had occasion to purchase any large railroad tickets, or say 1500-mile tickets, from any of these railroads?

Defendant objects, as irrelevant and incompetent.

A. I have not bought any large tickets; in fact, I haven't bought any at all.

Q. 9. Has your house of Allen, West & Co. bought any?

A. They probably have through their agent; not themselves; for instance, I never have gone to the office and bought a ticket.

Q. 10. Do you know whether your agents have bought any ticket or tickets for transportation over the Iron Mountain R. R.; I mean passenger ticket or tickets; or has any one in your employ bought any of these tickets?

A. Well, yes; I reckon I have to know that.

Q. 11. What is it you know?

655 A. I would rather you would just put the questions; I don't like to go on and state.

Q. 12. I have put it; I asked you what you knew; that is a broad question; it embraces all you know about the purchase of any ticket or tickets for a passenger fare over the St. Louis, Iron Mountain and Southern railway?

A. I bought—you ought to specify; you know I bought various sorts of tickets.

Q. 13. I say 1500-mile tickets?

A. Well, yes; I think I know of a 1500-mile ticket that we bought.

Q. 14. What did you pay for it?

A. I think it was $35; I would probably have to refer—I am positive of it as far as my memory goes; I wouldn't like to say absolutely the exact figures without looking at the book.

Q. 15. At what time did you purchase that if you did purchase it?

A. I could not guess within a month of it or two months; it has been some time ago; last year; I have been here since the first of June.

Q. 16. Was it during the year 1880? A. Yes, sir.

Q. 17. What time? A. I couldn't tell you.

Q. 18. Was it in the warm weather or since the cold weather?

A. I couldn't tell you that.

Q. 19. Was it since June last? A. Yes, sir.

Q. 20. For what purpose was that ticket bought; for your own travel or for some other person?

A. It was not for my own travel; it was for our agent.

Q. 21. Your agent for what purpose?

A. To travel up and down the road to solicit cotton business.

Q. 22. Will you please ascertain the date and amount with more certainty than you have, so that you will not have any doubt about it, and return and state to-morrow morning?

A. I would like mighty well to get through with this thing.

Q. 23. You have said you don't know the amount?

A. I am as positive of the amount without reading it off the book; that is all.

Q. 24. Very well; I am satisfied; do you know of any other person who has bought a 1500-mile ticket? A. No.

656 Cross-examination by Mr. THOROUGHMAN, for the defendant:

Cr.-Q. 1. I want to ask just this one question, whether cotton comes to you by ordinary freight or by express?

A. It comes by freight.

Cr.-Q. 2. It don't come by express? A. No.

Cr.-Q. 3. You don't know but what everybody who is engaged in the cotton business get their 1500-mile tickets at the same price you get it? A. I am inclined to think they do.

Cr.-Q. 4. All persons in that business, so far as you know, were treated alike? A. Yes, sir.

Mr. GLOVER: Are you sending or receiving any express matter over the St. Louis, Iron Mountain & Southern railway? A. Very little, indeed, excepting money.

Cr.-Q. 5. You do do express business over that road?

A. Yes, sir; I would like to say this, that the 1500-mile ticket has no influence in the world in my express business; not the slightest.

Cr.-Q. 6. I presume you are like other men in business; you go where you can do most favorably?

A. That is what we think about it; as the agents of both are clever, we have been sort of divided between them, and their books will show that.

Signature waived.

LEVI JOY, sworn on the part of the plaintiff, testified as follows:

Direct examination by Mr. GLOVER:

Q. 1. Where do you reside? A. In this city; St. Louis.

Q. 2. Are you in business?

A. I am with the house of Hill, Fontaine & Co., cotton commission business, corner of Third and Locust.

Q. 3. How long have they been in the cotton business?

A. The firm has been in the cotton business a good while; they have been located here permanently nearly 18 months; 16 or 18 months.

Q. 4. Over what railroads do they deal?

A. They get their cotton and things over the Iron Mountain, principally.

Q. 5. Do they do any express business over the Iron Mountain road? A. Yes, sir.

657 Defendant objects as irrelevant, and incompetent.

Q. 6. How long have they been dealing in those express freight matters over the Iron Mountain railroad?

A. They have done more or less of it ever since they have been in business, I reckon.

Q. 7. What do you know, if anything, of a sale of 1500-mile or 1000-mile tickets over the St. Louis, Iron Mountain & Southern railway to your house or yourself or any employee of your house?

A. I am cashier of the house; I bought tickets there for the house's use and benefit only.

Q. 8. Who use the tickets?

A. They are used by our employees; employees of the house.

Q. 9. Used by your employees in what business?

A. In the cotton commission business.

Q. 10. Over that road? A. Yes, sir.

Q. 11. How much did you pay for that ticket?

A. The last two we bought, I bought at $35 apiece.

Q. 12. How many have you bought in all?

A. I don't remember. I have only been here about six months myself; I don't think I bought but two; yes, I think I bought three.

Q. 13. $35 each? A. Yes, sir.

Q. 14. What period of time will cover all those three tickets? A. The last six months.

Cross-examination by COL. THOROUGHMAN, for the defendant:

Cr.-Q. 1. Mr. Joy, you have been here, you say, about six months?

A. About six months; I came about the first of July.

Cr.-Q. 2. Where were you before that? A. Memphis.

Cr.-Q. 3. You were in business in Memphis before coming here? A. Yes, sir.

Cr.-Q. 4. In this same cotton business? A. No.

Cr.-Q. 5. Do you know whether you got those tickets at the rate they were given out to cotton merchants generally?

A. That was my understanding, that they were given to cotton merchants only at that figure; the regular rate was $52.50, I think.

Cr.-Q. 6. All persons engaged in that business got them at the same price?

658 A. I think so; that was my understanding.

Cr.-Q. 7. You have some knowledge of the fact that commercial men with railroads are trying to build up a cotton business and make this place a cotton market?

A. That is my understanding.

Cr.-Q. 8. There is a general movement in commercial circles in that direction? A. Yes, sir.

Signature waived.

JOHN E. HAGGERTY, sworn and examined on the part of the plaintiff, testified as follows:

Direct examination by MR. GLOVER:

Q. 1. What is your business? A. Commission merchant.

Q. 2. Where is your commission house?

A. 944 Broadway; commission and general merchandise.

Q. 3. Where do you reside?

A. 1005 Collins street, St. Louis.

Q. 4. Have you had any employment in the last six months over the St. Louis, Iron Mountain & Southern railway?

A. Have I had any employment?

Q. 5. Yes, have you traveled over that road on any business? A. Yes, sir; I did.

Q. 6. What was that business?

Defendant objects, as irrelevant.

A. Well, there was a party in Hot Springs, Ark., who owed me $240 and odd; I wanted to go down and collect it.

Q. 7. You went down and attended to that?

A. I did; tried to.

Q. 8. Have you transacted any express business over the St. Louis, Iron Mountain & Southern railroad? A. I did.

Q. 9. What was it; that is, the kind of business? I do not ask you the amount.

A. Forwarding poultry and game to Southern markets.

Q. 10. Fresh meats of various sorts?

A. No, not over the Iron Mountain. I send that over the other express; Albright's Express.

Q. 11. Over the Southern Express?

A. Yes, shipped all our meat with them.

Q. 12. It worked over the Iron Mountain? A. Yes, sir.

Q. 13. What I mean, did your goods which came over Albright's Express——

659 WITNESS: We have been furnishing a house in Hot Springs with fresh meats for several years, and we have always shipped that by the Southern Express Company.

Q. 14. Until how late?

A. Always. We never shipped any by the other express at all.

Q. 15. To what house in Hot Springs?

A. O'Neill & Co. lately; formerly J. J. Byrne & Co.

Q. 16. How did you happen to ship by the Southern Express Company?

Defendant objects, as irrelevant and incompetent.

A. Mr. Anderson was a friend of mine, and he asked me to ship by that express company, I believe, over two years ago. I never made any change with meats.

Q. 17. You continued to ship in that way?

A. Shipped that way all the time.

Q. 18. Are you still maintaining your express dealings through the Southern Express Company?

A. We have not shipped any meat since we got behind $240; I went down to settle the account; we didn't exactly agree, and I quit shipping.

Q. 19. That is, the house to whom you shipped didn't pay promptly, and you stopped it?

A. Exactly; we never shipped a pound of meat over the Iron Mountain Express to Hot Springs that I know of.

Q. 20. Did you ship anywhere else by the Iron Mountain express department; have you done any other business over the Iron Mountain to any other place than Hot Springs through its express department?

A. Yes, sir; we did.

Q. 21. To what point? A. New Orleans and Mobile.

Q. 22. When did you begin to ship to New Orleans and Mobile over the Iron Mountain road, through its express department; at what time; what date?

A. It is not very long ago; I couldn't exactly remember the date; I think it is about, maybe, a month or six weeks.

Q. 23. You are continuing your shipments over the Iron Mountain road, through its express department, up to this date, are you not?

A. No; they have no express now, as I understand; we did as long as they lasted.

660 Q. 24. As long as what lasted?

A. As long as the Iron Mountain Express; after we started to ship with them we continued till the time it changed hands some way; we have not shipped any over it lately; we ship now again by the Southern Express.

Q. 25. You don't say the Iron Mountain express department has ceased, do you?

A. That is what I understand from the agent.

Q. 26. Don't you mean the connecting roads at the other side of Columbus?

A. I don't know anything about the connection of the roads; I know we could not ship freight to that place as we did.

Q. 27. Through Louisville and Nashville?

A. I don't know what road it is.

Q. 28. You don't know that the Iron Mountain express department has ceased to do express business?

A. I don't know anything about that.

Q. 29. Have you, or your house, or your employees had any passenger fare tickets over the St. Louis, Iron Mountain and Southern railway of late; have any been bought for you, or your house, or employees; say 1,500-mile tickets?

A. No, sir.

Q. 30. 1,000-mile tickets? A. No, sir.

Q. 31. Well, any ticket for passenger fare?

A. Yes, sir; I bought a ticket from here to Piedmont and return paid for it at the office.

Q. 32. Did you pay full fare?

A. I paid full fare for the ticket down and back; whatever they charged me at the Union Depot.

Q. 33. Same as they charged others?

A. I don't know what they charged others; I know I went and called for a ticket down to Piedmont and back, and got it; that is the only ticket I know of bought for my house.

Q. 34. At the time you went to Hot Springs did you have a 1,500-mile ticket? A. No.

Q. 35. You don't know of the purchase of any 1,500-mile ticket?

A. I do not; I never knew that they had a 1,500-mile ticket.

Q. 36. Then you didn't know it?

661 A. That is the very reason, I didn't; I will get one now.

Q. 37. When you were doing business over the St. Louis, Iron Mountain & Southern railway did you make payments for your freight yourself, or did some agent for your house?

A. I made the arrangement for the payment.

Q. 38. What was the arrangement which you made with this St. Louis and Iron Mountain Railroad Company for the shipment of your freight?

A. The shipment of my freight from here to New Orleans and Mobile was the same as Mr. Albright first started into make it. Mr. Albright took 40 or 50 barrels, I disremember now which, for $3.00 a barrel, and, being acquainted with Brown, I told him if he would take it at the same rate I would give him the preference of the trade, and after that I gave it to him and he charged what Albright charged me. I would have given it to him instead of Albright at the first commencement if he had taken it, but he told me he could not take it unless he got a certain price. I could not pay that price, because Albright took it at three dollars a barrel. I gave it to Albright at the time, because the other man would not take it at that.

Q. 39. Who was the other man?

A. Brown, express agent of the other company.

Q. 40. What company?

A. Iron Mountain Railroad Company, I suppose.

Q. 41. Is the same true with regard to the shipments you made to Hot Springs?

A. What was shipped to Hot Springs along the main line we never paid on that; we shipped at the regular rate and they paid it down below, and we could not get a rebate. After that I commenced shipping by Brown. I gave him the bulk of the trade; we never got any rebate on what we shipped to Hot Springs, or Little Rock, or anywhere on the main line.

Q. 42. Did any arrangement that you made for shipments over the Iron Mountain railroad through its express department contain a condition about weights?

A. No, sir; it was so much a barrel. So much a barrel to New Orleans and Mobile. A regular charge per barrel. It was by weight to Little Rock and Hot Springs.

Q. 43. A barrel of what?

A. A barrel of game, poultry, anything we would put up.

662 Q. 44. Now, as to shipments to Hot Springs, was there any condition in the arrangement that you made for shipments over the St. Louis & Iron Mountain Railroad Company in regard to weights; were you charged full rates?

A. No; we never shipped anything to Hot Springs in our life by the Iron Mountain railway, except two barrels, and that was in the last two weeks; the barrels were all shipped by the other line.

Q. 45. How about Little Rock?

A. Little Rock the same way. We never shipped a pound of stuff in our life but what we shipped by the Southern Express Company until after Christmas, and that we shipped at the regular rate.

Q. 46. You mean this last Christmas?

A. This last Christmas.

Q. 47. 1880?

A. Within the last three weeks.

Q. 48. In regard to the shipments you made over the St. Louis, Iron Mountain and Southern railway through the express department, had you any condition in the arrangement about the quantity of pounds you were to be charged for?

A. No, sir, we had not; we had the same arrangement we made with Mr. Albright.

Q. 49. Did you always pay the full rate?

A. We paid by the barrel, same as Mr. Albright charged. I gave the preference of the trade to Brown, because Brown was a personal friend.

Q. 50. You don't understand me. I understand you paid them the same amount of money for a given amount of goods shipped; but was there any understanding that packages, barrels, or boxes you sent should be at under weight?

A. No, sir, there was not; nothing of the sort. On the contrary we got more stuff shipped for less money by Mr. Albright than we did by Mr. Brown.

Q. 51. How is that?

A. We got more weight for less money by Mr. Albright to New Orleans than we did by Mr. Brown. And if you will allow me, I will explain.

Mr. THOROUGHMAN: Who is Mr. Albright?

A. Agent of the Southern Express Company.

Q. 52. I was not asking about New Orleans; confine yourself to Hot Springs and Little Rock.

663 A. We never shipped any till three weeks.

Q. 53. Go on and explain about New Orleans.

A. To New Orleans we shipped rabbits unfrozen; we put in as many as a barrel would hold; I am sure they weighed 240 to 270 pounds; and Mr. Albright took them for three dollars a barrel.

Q. 54. They didn't take them by weight?

A. No; by the barrel.

Q. 55. You have never shipped any freight by the St. Louis, Iron Mountain & Southern Railway at under weight?

A. No; we shipped to Little Rock and Hot Springs, paying full weight. What we shipped to Southern points we paid three dollars a barrel for.

Cross-examination waived.

Signature waived.

O. W. **Ruggles**, sworn on the part of the plaintiff, testified as follows:

Direct examination by Mr. **Glover**:

Q. 1. Where do you reside? A. St. Louis.

Q. 2. Where is your place of business?

A. I am connected with the Iron Mountain road, as general passenger agent.

Q. 3. How long have you been such?

A. I have been general passenger agent about two years; I have been connected with the road several years.

Q. Do you sell 1500-mile tickets?

A. Yes; we have sold some in our office.

Q. 5. What is the price at which you sell them?

A. The regular price at which we sell them is $52.50.

Q. 6. What is the lowest at which you have sold them, say during the last six months?

A. I don't know that I could say the lowest price at which we have sold them; we have sold them at various prices; I don't know that I could say the lowest price.

Q. 7. Do you remember some of the prices at which you sold them under $52.50?

A. Yes; we have sold some at $35, some at $37.50, and some at $45.

Q. 8. Under what circumstances have you sold them under price?

664 I don't know that I could say that, Mr. Glover; the orders came to our office. In our office we make no rate for less than $52.50. I would get a request at different times from the general freight agent to sell a ticket at a certain price; what was his reason for selling at that price, I don't know.

Q. 9. The reasons were not communicated to you?

A. No; I don't know.

[Q.] 10. Who is he?

A. The general freight agent is S. Frink. Some orders came from Mr. Soper, the general superintendent of the line.

Q. 11. You simply receive a direction to issue a ticket to somebody for a certain price? A. Yes, sir.

Q. 12. And you execute the order? A. Yes, sir.

Q. 13. That is all you know?

A. That is all I know about it.

Q. 14. Mr. Ruggles, how many 1500-mile tickets do you suppose you have sold since June last?

A. That would be hard to tell. I could not begin to give any estimate, because I don't keep the account of it myself; my clerk in the office takes care of the reports and details. I have not examined into that, and could not tell without making an examination.

Q. 15. Can you tell to whom these tickets have been sold?

A. I can remember some persons.

Q. 16. Can you tell to whom?

A. I don't know that I can mention the names. I could say they have been sold principally to cotton firms here in St. Louis, and they have been sold to lumber men in St. Louis.

Q. 17. Do you remember of any having been sold to persons doing an express business over your railroad?

A. I don't know of my own knowledge of any having been sold, except from this, that at one time I think a gentleman came into the office and asked me if I would transfer a ticket that was issued to him—and he was connected with an express company—to some one else. I told him it was not our custom to transfer tickets for any one, and I could not do it.

Q. 18. Do you know whether any tickets have been sold of this sort, any 1500-mile tickets to the Southern Express Company?

665 A. I don't know that there have been any sold of my own knowledge; I don't know of my own personal knowledge of the matter that any have been sold.

Q. 19. Has there been any application made by any employee of the Southern Express Company to purchase a 1500-mile ticket to your knowlege? A. Not that I know of.

Q. 20. If an application should be made by an officer or employee of the Southern Express Company to purchase a 1500-mile ticket for $35, can you tell me if that ticket could be bought? A. It could not. I should refer him to the general freight agent or general superintendent, as I do all freight men who make applications for them.

Q. 21. You cannot sell them to anybody?

A. No; not on account of freight.

Q. 22. You don't know for what reasons they have been sold at under prices, prices under the regular rate?

A. Only my own opinion.

Q. 23. A surmise? A. Yes; that I can form myself.

Q. 24. Have any orders come to you stating why tickets are sold under price, $35?

A. Yes, sir; stating the reasons in this way.

Mr. Thoroughman: If that order was in writing, state that.

Q. 25. Is that order in existence?

A. Yes; they have regular printed forms in which they issue those orders generally. You can get it from Mr. Frink; he has them. It just says: "Mr. O. W. Ruggles, general passenger agent, please issue to so and so a 1500-mile ticket at such a rate." He mentions on the ticket "on account of cotton; on account of lumber;" or on account of whatever it may be.

Q. 26. Which words, I presume, mean shipment over the line? A. I presume so; I don't know anything about that.

Q. 27. Who else would know about this matter except Mr. Frink. A. I presume the general superintendent of the road would know.

Q. 28. Mr. Soper? A. Yes, sir.

Cross-examination waived.

Signature waived.

P. M. KEILEY, sworn on behalf of the plaintiff, testified as follows:

Direct examination by Mr. GLOVER:

Q. 1. Where do you reside? A. In this city.

666 Q. 2. Where is your place of business?

A. 612 North Fifth street.

Q. 3. What is your business? A. Commission.

Q. 4. How long have you been in business in St. Louis?

A. Since 1866.

Q. 5. Are you in any business requiring the sending of expres matter? A. Yes, sir.

Q. 6. Requiring the sending of common freight?

A. Yes, sir.

Q. 7. What business have you had in respect to the St. Louis, Iro Mountain & Southern Railway Co., if any?

A. Well, we have been receiving a great deal of goods from them in the way of fruits during the summer, and during the winter we have been shipping poultry, game, &c., South; shipping some to Little Rock.

Q. 8. How have you sent it; by what express company, or department, have you sent your express matter?

A. We have been shipping by the Iron Mountain Express, and also by the Southern Express.

Q. 9. What time did you begin to ship by the express department of the St. Louis, Iron Mountain and Southern Railway Co.? A. Well, we have very little to ship ourselves in the winter; we were receivers up to that time principally.

Q. 10. In May or June last had you any agent out on any road in reference to your business?

A. Yes; we had an agent down the road.

Q. 11. Who was he? A. His name is Wear.

Q. 12. Over what road did he travel?

A. Over the Iron Mountain.

Q. 13. How far did he go down?

A. He went down to Little Rock, a little this side of Little Rock, rather; I believe he went as far as Little Rock.

Q. 14. For what purpose did he go down there?

A. He went down to solicit business for our house.

Q. 15. Can you state to the examiner whether you know anything about a pass held by him?

A. Yes; I got a pass for him.

Q. 16. Who did you get that from?

A. I got it from Mr. Aikin, superintendent of the Iron Mountain Express.

667 Q. 17. What did you pay for it?

A. I didn't pay anything for it.

Q. 18. It was issued to you as a free pass?

A. Well, I don't know how it was issued; it was a pass.

Q. 19. It was a pass, and issued without money?

A. Yes, sir.

Q. 20. What was said at the time this pass [illegible] and at the time it was delivered; what was said by you [illegible] Aikin?

A. I came to Mr. Aikin and told him I wanted to send a man down the road to solicit business; that I had been going down heretofore myself regularly every spring, and I had been going down for seven or eight years every spring, and I always got a pass from the Iron Mountain Co. I told him that fact. I told him I wanted to send a man down. I thought I would get it as usual.

Q. 21. And you did get it? [A]. Yes, sir.

Q. 22. What was said, if anything, about the Iron Mountain express department in that conversation?

A. Well, I could not say. There was nothing imposed upon me compelling me to use the express company as a consideration for the pass; I know that.

Q. 23. Was there anything said upon the subject?

A. I don't recollect.

Q. 24. Was the express department referred to in your conversation when you got the pass for your agent; was there anything said about the business of the Iron Mountain road in that connection?

A. I cannot recollect anything in particular.

Q. 25. Have you dealt with the express department of the Iron Mountain road since?

A. Yes, sir. I will say this: Mr. Aikin refused. He said he would have to see Mr. Soper. I told Mr. Aikin I had always got a pass from Mr. Allen heretofore going South in the spring time, and Mr. Aikin was not aware of that fact. I presume he went to see somebody about it, and he got me the pass afterwards.

Q. 26. Do you know, Mr. Keiley, whether Mr. Wear did anything in behalf of the Iron Mountain express department?

Counsel for defendant objects, as irrelevant.

668 A. I don't know, of my own knowledge.

Q. 27. Where is Mr. Wear?

A. He is here in the city. He is up at Union Market; he has got a stand up there.

Q. 28. What did he tell you?

Counsel for defendant objects, as incompetent, it being a declaration of a third party.

A. He told me that he had a pretty lively time with the agents of the Southern Express Company down the road about business. Both companies have representatives on the road.

Q. 29. I will ask the witness what Mr. Wear told him when he reported to him the purchase of the ticket.

Mr. Thoroughman. We object.

Q. 30. When you delivered the pass to Mr. Wear was there any conversation between you and him as to what he was to do in behalf of the Iron Mountain express department, or not?

Defendant objects, as wholly irrelevant and incompetent.

A. Well, he understood.

Defendant objects.

Q. 31. What did he tell you?

A. He didn't tell me anything. He was simply going out as my agent. He knew he had a pass, and that I got him the pass. He had no particular instructions from me.

Q. 32. Did he have any general instructions—I mean in connection with the Iron Mountain express department?

Defendant's counsel objects, as irrelevant.

A. I told him that——

Mr. THOROUGHMAN: Don't state what you said to him.

Q. 33. Mr. GLOVER: That is what I want.

A. I told him that as I had been going South every spring on the road for many years I felt under obligations to the Iron Mountain Railroad Company, and I was disposed to favor them without making any war on the opposition. That is about the amount of it.

Cross-examination by Mr. THOROUGHMAN:

Cr.-Q. 1. Your business is what? A. General commission.

Cr.-Q. 2. You have been acquainted with Mr. Allen for some time, have you not?

A. Not personally acquainted; it does not come in that way.

669 Cr.-Q. 3. You have been connected with an agricultural journal? A. Yes.

Cr.-Q. 4. How long? A. Twelve years.

Cr.-Q. 5. You have been a constant writer for that agricultural journal?

A. Twelve or fifteen years; that is, almost constantly.

Cr.-Q. 6. Don't you know when you apply to Mr. Aikin you stated to him you had always, when you wanted a pass over the Iron Mountain road, got one?

A. Yes, I told him I had been getting one.

Cr.-Q. 7. Didn't you tell him also you had been a constant writer for agricultural papers? A. Probably I did; I don't recollect.

Cr.-Q. 8. Wasn't that one of the facts he reported to the superintendent when you got the pass—that you had been getting it before, because you were engaged in writing up the country?

A. I judge that was what he said, for he would not issue it without seeing him.

Cr.-Q. 9. You told him in your conversation you had been getting this pass, and had been engaged in writing up the country in an agricultural journal? A. Yes, sir.

Cr.-Q. 10. When you gave your employee the pass you told him you had been treated kindly by the Iron Mountain Railroad Co.?

A. And were under obligations to it.

Cr.-Q. 11. That you were under obligations and you did not want to make any war upon it, nor upon the opposition?

A. Nor upon the opposition.

Signature waived.

HENRY BROWN, sworn on behalf of the plaintiff:

Direct examination by Mr. GLOVER:

Q. 1. Where do you reside? A. At 2411 Wash street.

Q. 2. What is your business?

A. Iron Mountain Express Company solicitor.

Q. 3. What is the business of solicitor of the Iron Mountain Express Company?

A. To solicit freight for the express department Iron Mountain Express.

Q. 4. Do you travel in that capacity? A. Yes, sir.

Q. 5. Go about the city? A. About the city; yes, sir.

670 Q. 6. And go on the railroad? A. No, sir.

Q. 7. You are solicitor here in the city alone? A. Yes, sir.

Q. 8. Do you remember, Mr. Brown, not long ago a new train going out at a new time at which there had not been a train before? A. Yes, sir.

Q. 9. It was started upon the Iron Mountain railroad?

A. Yes, sir.

Q. 10. At what time was that?

Counsel for defendant objects to all this, as irrelevant.

A. I don't remember now exactly. I think some time in November. I don't exactly know the time. I didn't pay much attention to it.

Q. 11. It was early in November, the first part of November, was it not? A. I could not exactly say when.

Q. 12. Can you tell whether the Southern Express Company has done any business over the train?

Defendant objects, as incompetent and irrelevant.

A. I could not say.

Q. 13. Don't you know, Mr. Brown, it has been excluded from that train?

Defendant objects, as incompetent and irrelevant.

A. The Southern Express Company; I believe they have.

Q. 14. You believe it has? A. Yes, sir.

Q. 15. Don't you mean you know it has, Mr. Brown?

A. I don't think they have run on it.

Q. 16. In canvassing for business, Mr. Brown, as agent of the St. Louis, Iron Mountain & Southern Railway Co., in promoting the interests of its express department, which is your business, what use of the fact that the Southern Express Co. does not operate over that train have you made before the public?

Defendant objects, as incompetent and irrelevant.

A. I have told some of them we are running a train out at night; have a train going at night through parts of Missouri and Arkansas as far as Texarkana.

Q. 17. What have you stated about that train going out at night?
A. I told them we had a night train going at night.

Q. 18. Was that all? A. That was all.

Q. 19. Have you not mentioned the Southern Express Company in connection with that fact?

A. I might have mentioned that fact.

Q. 20. In that way?

671 A. I told them our time was twelve hours faster than the Southern Express Company.

Q. 21. Through what fact is it faster?

A. That we have a train going out at night.

Q. 22. Will you state to the examiner what effect your statement as solicitor of the St. Louis, Iron Mountain and Southern Railway Company, to the effect that the Southern Express Company did not travel on that new train, and that it was twelve hours ahead of any train that it did travel on, had in enabling you to secure business?

A. I could not tell that; I could not tell what effect it had.

Q. 23. Did you get any shipments after that statement that you were twelve hours ahead of the Southern Express Company?

A. Some I would and some I would not; some preferred the Southern Express Company.

Q. 24. At twelve hours behind? A. Yes, sir.

Q. 25. Do you know, Mr. Brown, of any fifteen-hundred-mile or thousand-mile passenger fare tickets having been issued by the St. Louis, Iron Mountain and Southern Railway Co.? A. No, sir; not that I know of.

Q. 26. Have you not had in your possession such tickets?

A. No, sir; I have not.

Q. 27. Do you know whether any shipper over the express department of the St. Louis, Iron Mountain & Southern Railway Co. has had them?

A. No, sir; not that I know of. I did get a pass one time for Mr. Haggerty; he said he wanted to attend to some business at Hot Springs.

Q. 28. What was said about the time you got him that pass?

A. He asked me if I wouldn't get him a pass to Hot Springs; that he had some matter to settle at Hot Springs, and he would like to go there, and said it was a matter of seven or eight hundred dollars, and he wanted me to get him a pass.

Q. 29. Did you get him the pass after that?

A. I went to the office and saw Mr. Aikin. I told him I would like to get a pass for Mr. Haggerty if I could, if there was any way to get it. I finally got it for him.

Q. 30. You got it? A. Yes, sir.

672 Q. 31. What did you say to Mr. Aikin when you asked him to get the pass?

A. I just told him Mr. Haggerty wanted me to get him a pass over the Iron Mountain road to Hot Springs. That he had some matter to settle of seven or eight hundred dollars with some party in Hot Springs.

Q. 32. Was Mr. Haggerty at that [illegible] over your road? A. He was, yes, sir.

Q. 33. At the time you delivered that pass to him [illegible] you state what conversation took place between you and him, [illegible] you said to him and what he said to you?

A. I don't remember; I just simply handed him the pass, and after I had given it to him he told me that pass was not right, that it only read to Little Rock, and Mr. Soper, I think, or the [illegible] clerk endorsed it to Malvern. That is the junction with the Malvern and Hot Springs road.

Q. 34. That is where you turn off to go to Hot Springs?

A. Yes, sir.

Q. 35. At the time Mr. Haggerty received that pass or after you got it, what was said between you and him about what he was to do for the Iron Mountain express department?

A. He said he had always been doing all he could for the Iron Mountain and Southern Railroad Co.'s express department since it started, and he always intended doing so.

Q. 36. Was that at the time you gave him the pass?

A. Yes, sir.

Q. 37. Do you know whether he did anything for the express department of the St. Louis, Iron Mountain and Southern railway?

A. I could not tell; I know he shipped a good deal of freight over the road, and a good deal of freight came to him over the road from different points along the line.

Q. 38. Will you tell me how he came to tell you that he had been always doing everything he could for the Iron Mountain express department?

Defendant objects.

Q. 39. Will you tell me what you said to him just before that; just before he said he had always been doing all he could for the Iron Mountain road; tell me what you had just said to him preceding that remark?

A. I didn't say anything to him.

673 Q. 40. He made that remark?

A. He made that remark.

Q. 41. Without anything being said by you?

A. Yes, sir; he did.

Q. 42. You didn't ask him to do what he could, and he did not reply he had been always doing what he could; he just made that statement without anything of yours drawing it out?

A. Yes, sir; I think he did.

Q. 43. Did you ever get a pass for anybody else over the Iron Mountain railroad?

Defendant objects.

A. No, sir.

Q. 44. For nobody except Mr. Haggerty?

A. That is all.

Q. 45. In soliciting for express freight, which is your business, what, if anything, did you say to shippers whom you desired to ship over the express department of your road about weights?

A. On one occasion I shipped some stuff to Hot Springs for Miller & Co., and they asked me to deduct the packages; I did on one occasion do that, and I reported the fact down to the office, to the agent.

Mr. **Glover**: Never mind what the agent said.

Q. 46. What did you do? A. I deducted the packages.

Q. 47. What did you say to shippers about giving them weights? A. Where we have fresh meats we generally deduct the ice, w-ere there is any ice shipped.

Q. 48. I will ask you what was said, if anything, about weights. Will you state if you ever said to shippers anything about weights, if they ever should ship over your road?

A. I did, on that one occasion, to Miller & Co., when they shipped to Hot Springs, and I was told afterwards to not do it again.

Q. 49. To any one else.

A. No, to no one else. It was full fare.

Cross-examination by Col. **Thoroughman**:

Cr.-Q. 1. You stated, you said, to Miller & Co., you would deduct the weight of the packages?

A. They asked me to do that.

Cr.-Q. 2. And you said you would do it? A. Yes, sir.

674 Cr.-Q. 3. Is that the Miller who testified a few moments ago?

A. Yes, sir; he is the gentleman.

Cr.-Q. 4. You said you reported the fact; what instructions did you get?

Plaintiff's counsel objects, as incompetent and irrelevant.

Cr.-Q. 5. State all that was said, and make a full answer to the question; state all about it.

A. I reported the fact down to the office; they told me never to take any packages of that kind unless it was full weight and get the full rates.

Cr.-Q. 6. What was your course of conduct after that?

A. I followed the instructions strictly.

Cr.-Q. 7. About this pass of Haggerty's, I will get you to state if you were not applied to quite a number of times by Mr. Haggerty before you made any applications for the pass?

A. Yes, I was; quite often.

Cr.-Q. 8. Wasn't the statement of Haggerty this to you, that he had been for a long time a patron of the Iron Mountain railroad? A. Yes, sir.

Cr.-Q. 9. And that he had an uncertain demand for seven or eight hundred dollars at Hot Springs? A. Yes, sir.

Cr.-Q. 10. That he was very doubtful whether he would collect it? A. Yes, sir.

Cr.-Q. 11. Didn't he ask you, in view of that fact, to get him a pass? A. Yes, sir.

Cr.-Q. 12. Basing it on the idea that his [illegible] and the fact he had been a long time a patron of [illegible] Yes, sir.

C.-Q. 13. And thereupon you represented these facts to Mr. [illegible] as stated to you? A. Yes, sir.

Cr.-Q. 14. You state that was the only case in which you got a pass for anybody? A. Yes, sir.

Cr.-Q. 15. And the reason you got it was because of the representation of the uncertainty of his demand, and the further fact he had been a long time a patron of the road and intended to extend his friendship to it? A. Yes, sir.

Cr.-Q. 16. I will get you to state if, before you made that deduction for Miller & Co., you had not received instructions from the managers of the road to make no such deductions at all, and if you didn't do that upon your own responsibility?

A. Yes, I did.

675 Cr.-Q. 17. And after you reported it you were instructed explicitly not to do it again? A. Yes, sir.

Cr.-Q. 18. And you have conformed to that instruction?

A. Yes.

Cr.-Q. 19. Full weights and full fare were charged every one? A. Full weights and full rates.

Cr.-Q. 20. You had nothing to do with the fares?

A. No, sir.

Cr.-Q. 21. You stated to Mr. Glover you knew nothing about 1500-mile tickets having been sold to anybody?

A. No; I do not.

Mr. Glover: Do you know whether Mr. Haggerty is the editor of a newspaper? A. I could not say.

Signature waived.

At this point the further taking of testimony in this cause was adjourned to Friday morning, January 14, 1881.

St. Louis, *January 14, 1881.*

Parties met pursuant to adjournment, and the taking of testimony was resumed before L. L. Walbridge, special examiner, as follows:

James T. Farrell, of lawful age, being produced, sworn, and examined as a witness, testified as follows:

Direct examination by Mr. Glover:

Q. 1. Where do you reside? A. In this city.

Q. 2. Where do you do business?

A. 704 North 5th, in Union Market.

Q. 3. Have you ever been in the express business?

A. Yes, sir.

Q. 4. Are you acquainted with the nature of the express business? A. To a certain extent.

Q. 5. Will you state what it is? A. In what way?

Q. 6. Just describe the business.

nish. The express business is receiving and delivering of goods throughout the country.

Q. 7. What is the manner of it here in the city?

A. We receive a large line of goods by express; in fact, most of our business the goods are delivered to us.

Q. 8. Where?

A. At our store; at our place of business in Union Market, by different express companies.

676 Q. 9. Suppose you want to send goods from your store to Baltimore, what is the manner of the express business?

Defendant's counsel objected to what the manner of the express business is, as irrelevant and incompetent.

A. The wagons of the different express companies call at our place, some of them as much as four times a day, and others three times a day.

Q. 10. And do what?

A. And receive our goods and take them to their respective offices and send them off. All our business is done by express companies, and we have set times during the day for boys to call for goods.

Q. 11. Suppose that thing of calling to deliver goods and take goods were stricken out of the express business, state whether that business could be successfully conducted.

Objected to, as leading and no foundation laid.

A. I do not believe it could.

Q. 12. What express business have you done in the last twelve months; what sort of express business have you been engaged in?

A. We are engaged in shipping and receiving game, poultry, and oysters.

Q. 13. From what point?

A. All over the country. We get our oysters more particularly from Baltimore and New York, and game from North, South, East, and West.

Q. 14. Have you done any express business over the St. Louis, Iron Mountain & Southern railroad? A. Some; yes.

Q. 15. What sort of business?

A. We receive quite a quantity of game from the Iron Mountain Railroad Express Company, and we have shipped oysters, poultry, and game from here over the St. Louis, Iron Mountain & Southern Express Company.

Q. 16. Now, in the management of your business, say, over the St. Louis, Iron Mountain & Southern Railway Company, have you or not any employees? A. Yes, sir.

Q. 17. Where do those employees travel, if at all?

A. We do not have any employees traveling.

Q. 18. None one the road?

A. No, sir. We do our own traveling, whenever necessary.

677 Q. 19. Have you traveled over the St. Louis, Iron Mountain and Southern Railway Company?

A. No, sir, I have not. My partner has though.

Q. 20. Do you [illegible] house, purchased any [illegible] Louis, Iron Mountain and Southern Railway?

A. No, sir; I know he has not; [illegible] account of the [illegible]

Q. 21. How has he traveled on that road?

A. Well, the last time he was over that road it did not [illegible] anything to go over it.

Q. 22. Do you mean that he went free? A. Yes, sir.

Q. 23. How did that happen, Mr. [illegible]?

A. Well, Col. Soper and him are pretty good friends.

Q. 24. What is your partner's name? A. W. W. [illegible]

Q. 25. Well, go on and state about that.

A. Well, that is all there is about it; he went over the road, and it did not cost him anything to travel over the road [illegible] him something for a sleeping car.

Q. 26. You mean he had a pass? A. Yes, sir.

Q. 27. What was the extent or length of that pass? Did it cover one or more than one trip?

Objected to, as incompetent and hearsay.

A. You can bring him, and he can answer for himself; but that pass, by the way, was obtained before there was such a thing as an express company on the railroad.

Q. 28. What time was it obtained? A. Last April.

Q. 29. You mean April, 1880? A. Yes, sir.

Q. 30. Do you know what fares you, or your house, or your partner has paid for transporting express matter over the St. Louis, Iron Mountain & Southern railroad; I mean how much a [illegible]

A. I do not know that I could tell without [illegible] to my books.

Q. 31. Do you know whether it was under or above the regular rates?

Objected to, as leading and irrelevant.

A. I am inclined to think they are a little less than they——

Q. 32. Charged regularly? A. Yes, sir.

Q. 33. What time do you now speak about [illegible]?

678 A. Since the St. Louis, Iron Mountain & Southern Express Company has been in existence; in fact, come to think about it now, last summer during the fruit season they were [illegible] less than used to be charged before.

Q. 34. Can you get from your books or from your papers [illegible] of what rates you paid, fare rates, and to and from what points? A. Yes, sir.

Q. 35. Do you know what the rates are, and have been during the last year from St. Louis to Baltimore in your business?

Objected to, as irrelevant.

Q. 36. From Baltimore to St. Louis, you will state the rates for transporting oysters?

Objected to, as irrelevant and incompetent, because it does not ask for the average, but the freight of a special article.

A. They have changed the rates at various times during the past year; for the last two or three months the rate is supposed to be one dollar and a quarter a hundred on oysters from Baltimore to St. Louis.

Q. 37. What do you mean by "supposed to be"?

A. That is what they call their rate.

Q. 38. Well, what did you pay?

A. To come down to the actual weight of a package we do not pay so much.

Q. 39. When you say one dollar and a quarter, you mean a dollar and a quarter for what? A. Per hundred pounds.

Q. 40. How much did you ever pay for a case from Baltimore here? A. Paid a dollar and a half a case.

Q. 41. What time will that answer cover—that payment of a dollar and a half, how far does it run back?

A. It covers fully two months; two months certain.

Q. 42. Say six months ago?

A. They were a little higher than that previously.

Q. 43. How many pounds were in a case?

A. 175 actual weight.

Q. 44. How far is it from here to Baltimore?

Objected to.

A. That I do not know.

Q. 45. If a case weighs 175 pounds, and the express charged from Baltimore to St. Louis is a dollar and a half for the transportation of it, how much is that per hundred pounds; you have figured it, I suppose, frequently?

679 A. Well, I know it is less than a cent a pound; about ninety cents a hundred, I should judge.

Cross-examination by Col. Thoroughman:

Cr.-Q. 1. You spoke of your partner, Mr. Judy, having a pass, that was an annual pass, was it? A. A special pass.

Cr.-Q. 2. What was its duration?

A. Ten days, I think; no, I think two weeks.

Cr.-Q. 3. Issued in April? A. Yes, sir.

Cr.-Q. 4. And good until used?

A. Yes; Col. Soper gave it to him.

Cr.-Q. 5. You say the relation is very friendly between Mr. Judy and Col. Soper? A. Yes, sir.

Cr.-Q. 6. You are in the game business?

A. Yes, and poultry, oysters, and fruit in season.

Cr.-Q. 7. You supply Col. Soper, do you, with game, fish, oysters, and things of that sort?

A. Yes; he pays for what he gets, though.

Cr.-Q. 8. You say some time in April last a pass was issued to Mr. Judy by Col. Soper? A. Yes, sir.

Cr.-Q. 9. How do you know it was limited to two weeks?

A. I saw it.

Cr.-Q. 10. What was the date of the pass?

A. I can't tell you the date.

Cr.-Q. 11. Wasn't it about the first of the year, some time in January the pass was issued, January, 1880?

A. No, I think it was later than that.

Cr.-Q. 12. Do you know why it was issued?

A. No, I should judge it was on account of the friendly relations existing between Col. Soper and Mr. Judy; he had obtained a pass from Col. Soper before for himself.

Cr.-Q. 13. It was not an unusual thing for him to do?

A. No, Mr. Judy sent some pigeon shippers to Mr. Soper with a letter to get a pass to go down the road and Mr. Soper refused to give them a pass last March; he came down to our store Saturday evening and had another gentleman with him, and he says to Mr. Judy, "When you want to go over the road yourself come to my office and I will see that you won't have to walk down;" when Mr. Judy got ready to go he went down and got his pass.

680 Cr.-Q. 14. Now, I wish to refresh your memory whether Mr. Judy did not want to go along the line of the Iron Mountain railroad with a view to ascertain the ground for fishing and game likely to be found through there generally?

A. No, at that time he went in the interest of his fruit business, to see fruit growers.

Cr.-Q. 15. At that time it was in the interest of the fruit growers? A. Yes, sir.

Cr.-Q. 16. You receive also consignments of fruit from that country? A. Yes, sir.

Cr.-Q. 17. So that in relation to what was done by Mr. Soper, or intended, was this done to send any man to get up a commerce of any sort that would come back on the Iron Mountain railroad?

Cr.-Q. 18. Don't you know in the history of the Iron Mountain railroad it has always given to iron men, lumber men, cotton, cattle, and wheat men favors over that road to induce commerce to be sent over that road? A. Well I do not know that.

A. I cannot speak outside of our business.

Cr.-Q. 19. He told you those pigeon hunters could not get a pass, but that Mr. Judy could? A. Yes, sir.

Cr.-Q. 20. That he had got a pass and it was to go down to look after the interest of your business, to see fruit growers?

A. That is it.

Cr.-Q. 21. Do you know enough about railroads to tell us the different cost on a road running from St. Louis to Baltimore in one case, and in the other from St. Louis to Texas?

A. I am not familiar with railroads enough to say anything about that.

Cr.-Q. 22. Are you able to answer this question; have you sufficient knowledge to answer this question, whether a railroad running through a densely populated country can afford to carry for less money than one running through a sparsely settled country with little commerce and little travel?

Objected to; the witness is not a railroad expert and no foundation has been laid for it.

A. I haven't any knowledge sufficient to answer the question.

Cr.-Q. 23. You said something to Mr. Glover concerning less rates being charged you on fruit; less than what?

681 A. Less than had been charged by the Southern Express Company previously.

Cr.-Q. 24. Now, I will get you to state if all the charges that you pay on express matter, both to the Southern Express Company and on the Iron Mountain Railway Company, are not less than before the Iron Mountain Railway Company started its department? A. Yes, sir.

Cr.-Q. 25. So that the public now are being served for less money than when served alone by the Southern Express Company? A. Yes, sir.

Cr.-Q. 26. Isn't it true that all railroads and all express companies make special rates for fruit, owing to their great liability to damage in transit?

A. We have in some cases got special rates and in others not; we got them by seeking them, I guess.

Cr.-Q. 27. On account of the very nature of the property being perishable and liable to easy injury? A. Yes, sir.

Cr.-Q. 28. You say you have no employees that travel on the Iron Mountain railroad? A. None at all.

Cr.-Q. 29. Have you none yourself? A. No.

Cr.-Q. 30. Now, Mr. Glover asked you if the notice and calling for express matter was taken out of the business if it would not ruin it, or something to that effect?

A. Something of that kind; he wanted to know if it was a necessity, and I said I thought it was.

Cr.-Q. 31. Now, if I understand you, if those things were taken out, if the express companies did not do to them, then the Express companies would not be of any service to the public, is that it?

A. I would not consider them such; I do not know what we would do without them; our business is so extensive with the express business.

Cr.-Q. 32. Couldn't you do business without them?

A. If compelled to we would have to.

Cr.-Q. 33. You don't mean to say, if it was not for the express companies you would quit, do you? A. No, sir.

Cr.-Q. 34. But you mean to say the express business would lose its essential value to you, unless it did extend those accommodations? A. Decidedly so.

Cr.-Q. 35. That is what you mean?

A. That is what I mean.

682 Cr.-Q. 36. You say you have been shipping and receiving some over the Iron Mountain railway express department since it was started? A. Yes, sir.

Cr.-Q. 37. With what satisfaction have you been served by that department of the road? A. Well, I cannot complain.

Signature waived.

[illegible], of lawful age, being [illegible] testified as follows:

Direct examination by Mr. GLOVER:

Q. 1. Where do you reside? A. In St. Louis.

Q. 2. How long have you resided there?

A. Nearly eleven years.

Q. 3. What is your business?

A. I am general freight agent of the St. Louis, Iron Mountain & Southern Railway Company.

Q. 4. How long have you been in that employment?

A. Nearly eleven years.

Q. 5. How long have you been connected in business and had experience with the railroad business?

A. Twenty-six years and over.

Q. 6. Has your experience been confined to any particular department?

A. Almost exclusively to the transportation of freight.

Q. 7. Common freight, as distinguished from express freight? A. Yes, sir.

Q. 8. Can you furnish the examiner, and will you, with your tariff rates of common freight for the St. Louis, Iron Mountain & Southern Railway Company, beginning with January, 1880, and coming down to the present time, with any changes that have been made?

Objected to, as incompetent and irrelevant.

A. I can furnish our general tariff, the same general tariff which has been in effect since January 1, 1875.

Q. 9. We have had, I think, some evidence from Col. Soper of the tariff rates of the St. Louis & Iron Mountain Railway Company as to which there are a number of blanks; can you furnish a perfect list, supplying all blanks, say to Columbus, Cairo, Texarkana, and other points, and can you give me a freight tariff without blank?

A. I can furnish you a general tariff with the rates to Texarkana and Little Rock.

683 Q. 10. You mean from St. Louis?

A. Yes, and from those points here which I suppose is the same. The tariff works both ways.

Q. 11. Will you do that? A. I can do that.

Q. 12. Can you tell me what is your charge per one hundred pounds for freight—I mean common freight, not express freight—from Texarkana to New York?

Objected to, as irrelevant and incompetent.

A. We do not make rates regularly from Texarkana to New York. Our rate is made from Texarkana to St. Louis, and added to such rates as are in effect from time to time from St. Louis to New York. The through rate depends on the amount of freight to be shipped and the rate in effect east of St. Louis at the time of shipment.

Q. 13. The rate, then, on freight charged from Texarkana and through St. Louis to New York is the fixed rate from Texarkana to

St. Louis, and changed according to the current freight rate over roads east of St. Louis? A. Yes, sir.

Q. 14. Now, will you make the through rate from Texarkana over the St. Louis, Iron Mountain & Southern railroad through St. Louis, and to New York over the roads east of St. Louis; what proportion of the general charge from Texarkana to New York is received by the St. Louis, Iron Mountain & Southern Railroad Company?

Same objection as before.

A. You mean to ask that on a basis of percentage?

Q. 15. I do not mean to ask it on a basis of percentage, but my object was to ascertain whether the rate which you receive is greater or less than the amount which you charge and receive on a shipment beginning at Texarkana and ending at St. Louis?

A. The calculation is—they are not so invariably carried out—but the intended purpose is to make it the same.

Q. 16. Is not that in practice often less than your full rate from Texarkana to St. Louis?

Objected to, as leading and as before.

A. We not unfrequently bring freight from Texarkana to St. Louis proper, or to St. Louis for distant points east of St. Louis, at less than the published schedule of rates.

Q. 17. How far is it from Texarkana to New York by the St. Louis, Iron Mountain & Southern railway?

684 Objected to, as irrelevant and incompetent.

A. By what route east of St. Louis?

Q. 18. By the route you ship by?

A. We ship by all lines.

Q. 19. They say the Vandalia and Pennsylvania railroad?

A. It is said to be 489 miles from Texarkana to St. Louis, and 1,071 miles from St. Louis to New York, I am not positive as to the correctness.

Q. 20. That is the rate on which you act in business?

A. That is the understood distance in our business.

Q. 21. What is the distance going over the same road from Texarkana to St. Louis, and by the Ohio & Mississippi to Cincinnati and so on, and Philadelphia?

A. I have not the figures, and I cannot say.

Q. 22. Have you or not in your mind the standard rate when the shipment is from Texarkana to St. Louis and on over the Vandalia & Pennsylvania railroad to New York for the amount of the through freight which is charged and received on through shipments by the St. Louis, Iron Mountain & Southern Railway Company?

Same objection as before.

A. I might probably name a rate on some specific articles; you might name one that I could not and might name one that I could.

Q. 23. Isn't the proportion more or less than the proportion of the distance from Texarkana to St. Louis, when compared with the whole distance?

A. We receive a higher rate of freight per ton per mile than the rates of St. Louis.

Q. 24. Is that higher rate which you receive from through shipments to New York over the Pennsylvania road greater or less than the rate you charge from Texarkana to St. Louis?

A. I believe I answered that question practically when I said sometimes there might be instances where it was less, but as a general rule, very general rule, the amount is the same whether the freight stops at St. Louis or goes to points beyond; very few exceptions.

Q. 25. How is it in regard to freight coming from New York over the same line, to wit, the Pennsylvania railroad, on to St. Louis and down to Texarkana?

Same objection as before.

685 A. The rate from St. Louis to Texarkana on freight coming from New York is less, a few cents probably a hundred pounds, than the rate from St. Louis proper to Texarkana; I will state if there is any difference it is very slight; I will have to refer to figures in my office to state definitely; it is very little now; not as much as it was.

Q. 26. What have you to do, if anything, with the handling of express freights over the St. Louis, Iron Mountain & Southern railway? A. Nothing.

Q. 27. Since April 23, 1880, what do you know, if anything, in respect to the issuing of freight passes to shippers, or traveling agents of shippers for mercantile houses, or persons doing business over the St. Louis, Iron Mountain & Southern railroad?

Objected to, as irrelevant and incompetent.

A. I know during the year 1880 some persons obtained and were supposed to have used free passes.

Q. 28. Were those persons of the description named in the question? I wish to know whether they were persons who traveled for pleasure, without business connections and intentions, or whether they were traveling with business purposes, which business was connected with the St. Louis, Iron Mountain & Southern railroad?

A. Undoubtedly both, both complimentary passes and passes given to business men, and sometimes, I think, to the employees of business men, although I would not say positive.

Q. 29. Can you give me the estimate of the number of passes? A. I have no knowledge of them.

Q. 30. In what business specially, if you can remember, were those persons to whom you issued free passes employed; what kind of business?

Objected to, same as before.

A. Well, I have not issued any free passes; it is not in my province.

Q. 31. Who issued the passes?

A. Those passes were issued by the general superintendent and those probably higher in authority than he; the passes I know of were issued by general superintendent.

Q. 32. Can you give me an estimate of the number of passes issued by him? A. No, sir.

686 Q. 33. What do you know, if anything, in respect of the sale of passenger fare tickets of 1,500 miles or less since April 23, 1880, coming down to this time?

A. I know they have been issued to the representatives and gentlemen soliciting freight for different houses; also to principals in business on the line of the road.

Q. 34. Were those persons of whom you speak, to whom those tickets were issued, engaged in transporting or having transported express matter over the road and freight matter over the road?

Objected to.

A. I don't know anything about their express business, but as far as I know they were engaged in mercantile business which would bring freight business over the railroad, as far as I know of the issue of the tickets.

Q. 35. Can you give me the names of those persons?

A. I cannot give you them now.

Q. 36. Have you any record of them?

A. I think our passenger agent has a record of them.

Q. 37. Of the 1500-mile tickets sold?

A. Yes; Mr. Ruggles, general passenger agent, can give them, I suppose.

Q. 38. Who authorizes the issuing of the 1500-mile tickets; what officer gives the order?

A. For those 1500-mile tickets the usual authority comes from the general superintendent, or rather the passenger agent; for those I know of, they are issued by me or my assistant, Sibley.

Q. 39. How is that done? A. On application made to me.

Q. 40. What do you do? A. I have a little blank which I fill out requesting the passenger agent to furnish to blank 1500-mile tickets.

Q. 41. On what principal do you request the issuing of 1500-mile tickets? A. With a view to increasing trade.

Q. 42. What? A. General trade, all railroad commerce of the country, particularly that business that will come over the line of the Iron Mountain.

Q. 43. Did you say you do not keep a list of the names to whom issued? A. I do not.

Q. 44. At what price were those 1500-mile tickets of which you speak issued?

687 A. There has been a difference in the prices; it has varied from time to time; I would not be positive; my impression

is, the orders given in my office for 1500-mile tickets from the 1st of May to the current month were thirty-five dollars each.

Objected to, as before.

Q. 45. What was the full regular price they paid without an order of reduction?

A. My understanding was fifty-two dollars and a half, three cents and a half a mile; since the first of January, we have made two cents and a half a mile for special tickets.

Q. 46. Will you tell me whether those 1500-mile passes of which you speak, which are issued you at $35 each, are issued promiscuously to any one who applied for them?

Objected to, as leading.

A. They are not.

Q. 47. What is the controlling idea, then, of issuing them to particular persons?

A. The idea is to issue them to persons whose business will be important to the traffic of the road; that is, we deem it to be important.

Q. 48. I wish to know whether the Southern Express Company is in the class of those to whom you would issue 1500-mile tickets for $35.

Objected to, as immaterial and leading.

A. I will answer by saying if any transportation company should apply to me for a 1500 mile ticket for any representative of theirs, I should refer them to the general superintendent; I should not consider that in the line of tickets I was authorized to issue; I have simply stated what my action would be; it has not been done, to my knowledge.

Q. 49. Now, will you furnish to the notary the list I have asked for, the general freight tariff of January 1st, 1880, and the changes to date?

A. I will answer that question like this: I will furnish you a general freight tariff, but there have been in the transaction of our business a good many cases where, in order to move products, we have made special arrangements for certain amounts of certain kinds of products between certain places.

Q. 50. Whatever departure there was from that rate I do not ask, and you cannot give.

688 A. I cannot give; but I can give the general ruling rates.

Q. 51. Can you give the rates to Little Rock, Columbus, Texarkana, and Cairo, which were blank on the paper furnished to us by Col. Soper? A. I can fill in those blanks.

Q. 52. Have those tickets of 1500-miles, to your knowledge, for passenger travel over the St. Louis, Iron Mountain and Southern railroad, been issued to other persons than cotton men and editors of newspapers?

Objected to, as immaterial.

A. Yes, sir.

Signature waived.

JOHN F. WATKINS, of lawful age, being produced, sworn, and examined, testified as follows:

Direct examination by Mr. GLOVER:

Q. 1. How long have you resided in the city?

A. Four years.

Q. 2. Are you in business? A. Yes, sir.

Q. 3. At what place? A. 606 Washington avenue.

Q. 4. What is your business?

A. Wholesale hats and gloves.

Q. 5. In the course of your business do you express matter upon railroads?

A. Yes, we do sometimes; very little of it, though.

Q. 6. Do you receive express matter from the roads?

A. Except from the East, only very rarely.

Q. 7. What business, if any, have you done over the St. Louis, Iron Mountain & Southern railroad?

A. We have done very little express business; now and then a small package is sent, but our freight business is largely over that road; general freight business.

Q. 8. Does it move from St. Louis to the South, or come from the South up.

A. The other way, from the North to the South, except now and then where we make a mistake in shipping goods, and they are returned to use; that is the only freight we get this way.

Q. 9. Have you had occasion to purchase any passenger fare tickets over that road? A. Yes, sir.

Q. 10. What kind of tickets?

A. Well, we generally use 1500-mile tickets.

689 Q. 11. How many of those have you purchased?

A. I have been buying them ever since I have been in business; I cannot say how many I have bought.

Q. 12. How many in this year since last May?

A. I think we might have bought four or six; we have two men on the road; we probably bought anyhow as many as four since May, 1880.

Q. 13. What is the business of those men of yours that travel on the road?

A. Solicitors of trade, generally called drummers.

Q. 14. For your house? A. Yes, sir.

Q. 15. How many tickets did you say you had bought since last May?

A. Four or six, I should say. We have two men on the road; they go out twice a season; sometimes do not use out a whole ticket, and sometimes do, and probably as many as six.

Q. 16. What do you pay for a ticket?

A. Two and a half cents a mile, I think; thirty-seven dollars and a half, I understand, we pay for them, for a 1500-mile ticket.

Q. 17. Do you deal in cotton? A. No, sir.

Q. 18. Are you the editor of a newspaper? A. No, sir.

Cross-examination by Col. THOROUGHMAN:

Cr.-Q. 1. What is the business of your firm?

A. My firm now is John F. Watkins & Co.; up to the first of December it was Watkins & Gillian.

Cr.-Q. 2. You have been in business here four years?

A. Yes, sir.

Cr.-Q. 3. This course of dealing has existed between you and the road since you have been in business here?

A. Yes, sir.

Cr.-Q. 4. The price of those tickets has fluctuated some, has it not?

A. I think it has since it first began. I think the traveling men in Arkansas generally would themselves go and buy tickets, and once in a while I bought them; but I generally gave them expense money, and they would buy them and report when they came back, and my recollection is that is the fixed price. I have never paid higher than that.

Cr.-Q. 5. You say you are a large freight shipper over that road since in business?

690 A. We ship more over that than any other road. I cannot say very large.

Cr.-Q. 6. I understand you are in an extensive hat business?

A. Yes, sir.

Cr.-Q. 7. Keep two runners?

A. Two on that road traveling, particularly in Arkansas; I have other men to ship other goods over that road besides; Texas freight goes over the road; about four men, I think, on that road.

Cr.-Q. 8. You have been friendly to the Iron Mountain railroad in the matter of shipping?

A. Yes; rather given it the preference.

Cr.-Q. 9. What are your relations to the officers of the road?

A. Our relations have been only business relations—friendly business relations; always felt very friendly towards the road.

Cr.-Q. 10. You not only ship goods that go to Arkansas over that road, but goods that go to Texas?

A. I have given it the preference.

Cr.-Q. 11. You keep out two men all the time?

A. Two in Arkansas.

Cr.-Q. 12. Now, state if your business is not the largest business of that class done in the city of St. Louis, or in the West anywhere.

A. No, sir; not as large as done in the city of St. Louis or in the West.

Cr.-Q. 13. Don't it rank about a first-class Western trade in that sort of goods? A. Do you include Chicago?

Cr.-Q. 14. No. A. Well, if you do not include Chicago, I think it ranks about as large as any Western house.

Cr.-Q. 15. Your business is wholesale? A. Altogether.

Cr.-Q. 16. The little express business you have done is between this city and the Eastern cities? A. Yes, sir.

Cr.-Q. 17. And matters South are so inconsiderable you do not specify them?

A. Yes, sir; so small should call it nothing hardly.

Signature waived.

W. A. HARGADINE, of lawful age, being produced, sworn, and examined, testified as follows:

Direct examination by Mr. GLOVER:

Q. 1. You live in St. Louis, Mr. Hargadine?

691 A. Yes; and am a member of the firm of Crow, Hargadine & Co., engaged in the wholesale dry goods business.

Q. 2. What place?

A. 714, '16, '18, '20 Washington avenue, corner of 8th.

Q. 3. How long have you lived in St. Louis?

A. Since 1843.

Q. 4. Is it necessary for you to employ express agencies?

Objected to, as leading and incompetent.

Q. 5. We ship goods by express companies.

Q. 6. To what extent? A. Well, it is limited; I cannot tell how many now, how much we ship; all that is ordered to go by express.

Q. 7. Over what roads? A. Any roads they designate; have you reference to any particular road?

Q. 8. That is a thing we cannot ask you; what Missouri roads do you ship express matter over?

A. Over the St. Louis, Iron Mountain & Southern Railway Company.

Q. 9. To what points?

A. We ship them into Arkansas, Texas, Tennessee, and some into Kentucky, perhaps.

Q. 10. What class of freights are those?

A. They are small packages, light goods; some quite valuable.

Q. 11. By what sort of trains are they sent?

A. Express wagons call and take them.

Q. 12. Then you do an express business over the St. Louis, Iron Mountain & Southern Railway?

A. We turn them over to the express companies.

Q. 13. Now, have you or your house, or your employees, purchased in the conduct of your business any passenger fare tickets over the St. Louis and Iron Mountain railroad?

A. Yes; we call them thousand-mile tickets, or fifteen hundred mile tickets; they have them on all the roads.

Q. 14. During the last year, since May last, have you purchased any of those tickets? A. Yes, sir.

Q. 15. How many? A. I cannot tell for my life.

Q. 16. Can you give me an estimate?

A. I cannot; I have purchased two in the last week, and others were purchased along in the summer, as the men wanted them.

692 Q. 17. Would they amount to a dozen?

A. No, I should think not.

Q. 18. How many employees have you traveling over the St. Louis, Iron Mountain & Southern railway?

A. We have only two; one in Texas and one in Arkansas.

Q. 19. What are the duties of those employees in respect to your business?

Objected to, as irrelevant.

A. Their duties are to collect money and sell goods.

Q. 20. For your house? A. For our house.

Q. 21. Would the passes which you have bought amount to half a dozen in the past year?

Objected to.

A. I should think so.

Q. 22. What did you pay them?

A. The last we bought we paid two and a half cents a mile for them; twenty-five dollars for the thousand-mile tickets, and thirty-seven and a half for the 1500-mile tickets; I believe the same price was paid for the others.

Q. 23. Which you bought previously?

A. Yes, they might have been less, and they might have been more.

Q. 24. What is the business in which the house of Crow, Hargadine & Co. are engaged?

A. We buy and sell dry goods, nothing else; occasionally fill orders for merchandise to be bought in the city of St. Louis.

Q. 25. Now, are you engaged in the cotton business?

A. We have had coming over the St. Louis, Iron Mountain and Southern railroad this year some few bales of cotton consigned to us, and we turned it over at once to Senter & Co. to be sold, and the proceeds returned to us.

Q. 26. Those goods were consigned to you, under what circumstances?

A. They are generally from persons who owe us, and do not have accounts with commission merchants; in other words, they would rather trust us than to trust commission merchants, because they know I will get after them and get my returns as soon as the cotton is sold.

Q. 27. They are consigned to pay a debt to you?

A. Yes, sir.

693 Q. 28. You are not in the general cotton business? A. No, sir.

Q. 29. I need not ask if you are an editor of a newspaper?

A. I am not down to that yet.

Cross-examination by Col. THOROUGHMAN:

Cr.-Q. 1. You are not in the lumber business? A. No, sir.

Cr.-Q. 2. I understand you to state you used those express companies in your business? A. Yes, sir.

Cr.-Q. 3. You are a general wholesale dry goods merchant?

A. Yes, sir.

Cr.-Q. 4. And make that your special business?

A. Yes, sir.

Cr.-Q. 5. Those little favors you do in going out and filling up bills are matters of favor; you do not make it a business?

A. No business matter; all favor.

Cr.-Q. 6. You do not mean to say you couldn't do the business without the express companies? A. No, sir.

Cr.-Q. 7. You use them as a convenience in the business?

A. We follow out instructions and orders.

Gordon M. Briggs, of lawful age, being produced, sworn, and examined, testified as follows:

Direct examination by Mr. Glover:

Q. 1. Where do you reside? A. In St. Louis.

Q. 2. How are you employed?

A. By the Adams Express Company.

Q. 3. How long have you been in the express business?

A. About ten or twelve years; I cannot state exactly; over ten years.

Q. 4. Have you ever been in any other business?

A. Oh, yes.

Q. 5. State what. A. I have been in the dry goods trade and in the grocery trade.

Q. 6. Have you ever had anything to do with railroads?

A. Yes, sir.

Q. 7. What railroads?

A. With the Pacific and the North Missouri railroad, the Chicago and Alton, and the Iron Mountain.

Q. 8. During what period were you employed in the Iron Mountain?

A. From the 6th of July to the 10th of October, 1880.

694 Q. 9. In what capacity were you engaged while you were there in the employment of the St. Louis, Iron Mountain and Southern railroad?

A. As scrip clerk, scripping the freight that the Southern Express Company sent over the Iron Mountain railroad.

Q. 10. What were your duties?

A. To scrip each and every parcel of freight the Southern Express Company sent over the road.

Q. 11. Explain to the examiner what you mean by scrip.

A. To take scrip or a tally list of every parcel, the weight, and the person going to, and the place.

Q. 12. During the time you were acting as scrip clerk, as mentioned by you, did you take that tally, and did you make a scrip list of all the freights offered by the Southern Express Company for transportation upon the St. Louis, Iron Mountain & Southern railway? A. Yes, sir.

Q. 13. What were your instructions from the St. Louis, Iron Mountain & Southern Railway Company in that behalf?

A. To get the scrip or list of every parcel of freight that they shipped.

Q. 14. Well, sir, did you have any obstruction in any way in the prosecution of your business; if so, what was it?

Objected to, as leading, and irrelevant, and incompetent.

A. Well, the instructions were—the Southern Express Company sent some packages, and I was instructed to refuse them unless we got the scrip of every package separately.

Q. 15. In the execution of those orders, what did you do?

A. I refused them.

Q. 16. Refused what?

A. I refused the sacks they were put up in.

Q. 17. What packages?

A. I refused to receive them in the car.

Q. 18. What was done with them? A. Thrown out.

Q. 19. Were they opened afterwards? A. Yes, sir.

Q. 20. Go on and tell what was done.

A. They were opened out and I got the scrip of them.

Q. 21. I wish you to begin and tell the history of that transaction, just as it took place, one thing after another.

A. The sack was offered to me and I refused to receive it in the car, refused to take the scrip of it, the sacks were taken over to
the car and they were refused at the car and brought back
695 and opened, and I got a scrip of each and every parcel that
was in the sacks.

Q. 22. Then what was done? A. Then it went; they took the freight after I got the tally of it.

Q. 23. Now will you state after you got the list and tally of each of the packages in the sacks or bags, what was done in respect of charges, if anything?

A. The St. Louis, Iron Mountain and Southern Express Co. charged the Southern Express Co.——

Q. 24. Do you know of any such express company as the St. Louis, Iron Mountain and Southern Express Company?

A. It is so called—this railroad company's express.

Q. 25. What do you mean to say, that the St. Louis, Iron Mountain and Southern Railway Company, by its express department, charged the Southern Express Company upon the packages found in the sack of which you made the tariff?

A. The same they would any other customer of the company, any other shipper.

Q. 26. What is the charge; you say it was the same?

A. The tariff rate.

Q. 27. What do you know, if anything, about the payment of the amount charged?

A. I do not know anything except hearsay.

Q. 28. How many of those sacks while you were with the railway company were presented to you as scrip clerk, by the Southern Express Company, and refused to be received by you unless opened and the packages listed?

A. Almost every run, every one, the same sacks over——

Q. 29. How many runs were there in a day?

A. Three runs in a day.

Q. 30. What is the average number of sacks offered and handled as you have stated, refused first and then opened and tallied? A. How many sacks per day?

Q. 31. Yes. A. I cannot tell.

Q. 32. What is the average number of packages you would find in a sack after it was opened?

A. That I cannot say, it depends on the size of the package.

Q. 33. What did you say your instructions were about sacks when presented to you?

A. To refuse the sacks unless I got a scrip list of every package the sack contained.

696 Q. 34. To refuse what sacks?

A. The sacks that contained those packages.

Objected to, as immaterial, and as having been before stated.

Q. 35. Had you any instructions with reference to the sacks of other people than the Southern Express Company?

A. No, sir.

Q. 36. What do you know about any other sacks being presented to the express department of the St. Louis, Iron Mountain & Southern Railroad Company for transportation than those of the Southern Express Company?

A. Well, sir, I do not know; we are always having sacks presented more or less in the company.

Q. 37. What do you know, if anything, about refusal to receive any other sacks unless opened?

A. Never known to refuse, sir, received every other party's.

Q. 38. Do you know what was the practice of the St. Louis, Iron Mountain & Southern railway in respect of receiving sacks, boxes, and packages of the public generally?

A. I never knew them to refuse any freight of any kind.

Objected to.

Q. 39. Of any kind, from whom?

A. From any shipper that is shipping.

Q. 40. Will you state whether you made any demand upon any person, other than the Southern Express Company, to open a box, or package, or sack for listing?

A. I never did, sir.

Q. 41. Do you know whether or not, during the time you were there, there were boxes, or sacks, or packages, closed up, offered to the express department of the St. Louis, Iron Mountain and Southern railway for transportation, whether there were any others offered than those of the Southern Express Company? A. Yes, sir.

Q. 42. What was done with them?

A. They were shipped.

Q. 43. They were shipped without or with examination?
A. Without examination.

Cross-examination by Col. THOROUGHMAN:

Cr.-Q. 1. How long were you in the employ of the Iron Mountain Railroad Company?

A. From the 6th of July to the 10th of October, 1880.

697 Cr.-Q. 2. Who employed you? A. Mr. Aikin.

Cr.-Q. 3. Had you any duties other than those named to Mr. Glover? A. None other.

Cr.-Q. 4. Your special employment was scrip clerk?
A. Yes, sir.

Cr.-Q. 5. To take memoranda of shipments by the Southern Express Company? A. Yes, sir.

Cr.-Q. 6. You had no charge of goods shipped by the Iron Mountain express department? A. No, sir.

Cr.-Q. 7. Nor by the road? A. No, sir.

Cr.-Q. 8. Then the sacks or packages that were brought through the agency of the Iron Mountain express department, you do not know whether the sack had been examined or not? A. I was in the office.

Cr.-Q. 9. I say, would you necessarily know?
A. No, sir; not necessarily.

Cr.-Q. 10. Where were your duties?
A. At the depot till I got the scrip, and then at the 5th-street office.

Cr.-Q. 11. You did not perform any of the duties of the express department at 5th street? A. I did, sir.

Cr.-Q. 12. What? A. I was in the office and received the freight when offered to me; employed by the company.

Cr.-Q. 13. Did you give bond for the faithful discharge of your duty? A. No, sir.

Cr.-Q. 14. You were not required to? A. No, sir.

Cr.-Q. 15. Had no trouble with them about anything?
A. No, sir; no trouble at all.

Cr.-Q. 16. Now, you said to Mr. Glover that other people presented sacks and no inquiry was made about it?
A. Yes, sir.

Cr.-Q. 17. Now, you do not know what had been done by the other agents of the railroad company in the express department in reference to the examination of packages and sacks that were sent, do you? A. No, sir.

Cr.-Q. 18. All that could have been done; it was no part of your duty to do it; it might have been done without your knowledge? [A]. Yes, sir.

Cr.-Q. 19. Can you give an instance where a shipper brought to the depot out there, and put a package or sack or box in the express department of the Iron Mountain railroad, where they had not taken tally or schedule list of the articles shipped by them? A. Of the contents? 698

Cr.-Q. 20. Yes. A. I never knew of it.

Cr.-Q. 21. What I wish to know is, whether you want to say in this record that there was a discrimination made against the Southern Express Company; that is, from your knowledge, as to the tallying of this freight list or tariff list?

A. I wish to be understood that they tallied those sacks from the Southern Express Company.

Cr.-Q. 22. Do you mean on the opposite side they did not tally other people's parcels, or that you do not know anything about it? A. I never knew them to take and open a sack or parcel.

Cr.-Q. 23. But your duties were out at Union Depot?

A. My duties were there till the train went out.

Cr.-Q. 24. What they did when they received the packages on 5th street you do not know? A. No, sir.

Cr.-Q. 25. Would you have necessarily known, if opened there; were you receiving sacks or packages? A. When there I received the same as any other clerk in the office.

Cr.-Q. 26. Were you not instructed, as an employee, to make inquiries of persons presenting packages to the Iron Mountain railroad express department, of the contents of what they had, as you were of the Southern Express Company?

A. No, sir; I was not.

Cr.-Q. 27. Tell us what you did in reference to that; didn't you do it? A. No, sir.

Cr.-Q. 28. When different men came with packages you made no inquiries about it?

A. No, sir; not of the contents of the package.

Cr.-Q. 29. And did not pretend to know what was in them?

A. No.

Cr.-Q. 30. Did not want to know? A. No, sir.

Cr.-Q. 31. But you just received anything anybody brought you, but when coming to the Southern Express Company, then you must know everything? A. Yes, sir.

Cr.-Q. 32. Now, whose duty was it to receive goods generally at 5th street? A. The bill clerk was there.

Cr.-Q. 33. His name?

699 A. Porter, part of the time; before he came there I do not remember the man's name—Caswell, I think.

Cr.-Q. 34. When did you leave the employment of the Iron Mountain railroad?

A. The 10th of October.

Cr.-Q. 35. Who did you go to work for then?

A. I did not go to work for anybody till the latter part of November; for the Adams Express Company.

Cr.-Q. 36. Who did you work for before you went to the Iron Mountain?

A. I worked for the United States Express Company.

Cr.-Q. 37. In this city? A. Yes, sir.

Cr.-Q. 38. How long have you lived in this city?

A. Since 1866.

Cr.-Q. 39. So that you left the employment of the express company to go in the service of the Iron Mountain Railroad Company?

A. No, sir; I was out of the United States, on Broadway, in the commission business, three or four years—out of the express company entirely.

Cr.-Q. 40. Then you went to work for the Iron Mountain railroad?

A. Yes, sir.

Cr.-Q. 41. Within a month after you left the Iron Mountain railroad you went to work for the Adams? A. Yes, sir.

Cr.-Q. 42. What are you doing for the Adams now?

A. In the office, freight weighing at the scales.

Cr.-Q. 43. Where is its office? A. At the Union Depot.

Cr.-Q. 44. Who else keeps there except the Adams Express Company?

A. The United States and American are there.

Cr.-Q. 45. Has the Southern Express Company an office there?

A. The Southern Express Company has an office in the same office.

Cr.-Q. 46. Don't the same clerks do business for the Adams that do business for the Southern Express Company?

A. Yes, sir.

Cr.-Q. 47. Are you not as much to-day in the employ of the Southern Express Company as the Adams?

A. Not that I understand; I am hired by the Adams.

700 Cr.-Q. 48. But you were to perform the duties for the Southern Express Company as fully as if hired by them?

A. Yes, sir.

Cr.-Q. 49. How long has it been since you knew you would be a witness in this case?

A. I was told last night.

Cr.-Q. 50. Was that the first intimation you had?

A. Yes, sir.

Cr.-Q. 51. You knew nothing about it before at all?

A. Not about this.

Cr.-Q. 52. How long has it been since you first knew you would be a witness in this case?

A. O, I can't tell that; I gave an affidavit in October, I think; I cannot be positive.

Cr.-Q. 53. You were employed by the Adams Express Co. in November?

A. The latter part of November.

Cr.-Q. 54. How long was it from the time you gave the affidavit in this case, until you were employed by the Adams Express Company?

A. Three or four weeks, I should judge; I cannot tell exactly the time.

Cr.-Q. 55. How did it come you gave your affidavit; you were not then connected with the express company?

A. No, sir.

Cr.-Q. 56. You stood entirely aloof from the express company, or railroad company at that time?

A. Yes, not employed by the railroad company or express company.

Cr.-Q. 57. Within three or four weeks, however, after you gave this affidavit you were then employed by the Adams Express Company?

A. Yes, sir.

Cr.-Q. 58. And are still in their employ?

A. Am still in their employ.

Cr.-Q. 59. And rendering as much service for the Southern Express Company as for the Adams.

A. Not as much; their work is less than the Adams.

Cr.-Q. 60. But in proportion you do as much for the Southern as for the Adams?

A. Certainly, I do the same duties.

Cr.-Q. 61. Now, if you have told me your duties I do not remember.

701 A. I handle freight and weigh at the scales everything that comes along.

Cr.-Q. 62. Whose place did you take when you *you* went to the office?

A. I cannot tell that; I took a man's place that went on the road first; I went there temporary first to fill up the place for them; they wanted to put a man on the road a few days and I went to do his duties.

Cr.-Q. 63. How came you to leave the Iron Mountain railroad? A. Well, dissatisfaction.

Cr.-Q. 64. Between whom?

A. Well, between the agent and myself.

Cr.-Q. 65. Who is the agent? A. Mr. Vary.

Cr.-Q. 66. Dissatisfaction grew up; were you discharged?

A. Well, yes.

Cr.-Q. 67. Do you know Mr. Kerens—Mr. R. C. Kerens?

A. Yes, sir.

Cr.-Q. 68. Did he have a conversation with you when he employed you—about the time you were employed?

A. After I was employed.

Cr.-Q. 69. Now state if he did not give you instructions about your duties you were to do for the railroad. A. He did.

Cr.-Q. 70. Now, didn't Col. Kerens tell you in giving those instructions that you had to know everything that was shipped by anybody over the Iron Mountain railroad in its express department? A. He did not.

Cr.-Q. 71. Didn't he tell you emphatically that you must treat everybody alike in the shipment of goods that went over that line?

A. I don't remember his saying any such thing to me.

Cr.-Q. 72. Where did you see Col. Kerens?

A. First at Union Depot.

Cr.-Q. 73. Who was with him? A. I cannot state now.

Cr.-Q. 74. Do you know E. L. Dudley? A. No, sir.

Cr.-Q. 75. Do you know James Aikin? A. Yes, sir.

Cr.-Q. 76. Now, state if in July at the Union Depot, in the presence of James Aikin, Col. Kerens did not tell you, in taking that same tally and sending freight over the express department of the Iron

702 Mountain railroad, you must treat every [illegible] exactly alike, and must know the articles and the value of the articles the railway was taking the risk in carrying? A. No, sir; he did not.

Cr.-Q. 77. Did he give you substantially such instructions?

A. He gave me instructions at the time.

Cr.-Q. 78. Did he give you substantially such instructions, I have asked?

A. He gave me no such instructions; he gave me instructions at the time, if I had any suspicious packages being put up in sacks or boxes, to refuse to receive them in the car.

Cr.-Q. 79. By anybody? A. No; by the Southern Express Company.

Cr.-Q. 80. Do you want to be understood you were to examine only those packages presented by the Southern Express Company? A. Yes, sir.

Cr.-Q. 81. Nobody else? A. Nobody else.

Cr.-Q. 82. He expressly told you to examine nobody else's packages? A. No, sir; he never did.

Cr.-Q. 83. Were you told to examine anybody else's?

A. No, sir.

Cr.-Q. 84. What do you say that he told you to know particularly, the articles to be shipped by the Southern Express Company and those of nobody else?

A. He did not say anything about anybody else; he said the Southern Express Company; if I had suspicions that those sacks or boxes contained packages for different parties to refuse them till I got the scrip or tally of ever- parcel and package.

Cr.-Q. 85. What did he say in reference to property presented by other people? A. Nothing.

Cr.-Q. 86. He didn't say anything?

A. He never gave me any instructions on that.

Cr.-Q. 87. You say you were discharged by Mr. Vary?

A. By Mr. Aikin, through Mr. Vary.

Signature waived.

At this point the further taking of depositions in this case was adjourned till to-morrow, January 15, 1881, at 11 a. m.

St. Louis, *January* 15, 1881.

Parties met pursuant to adjournment.

B. B. Graham, of lawful age, being produced, sworn, and examined as a witness on the part of plaintiff, deposes and says as follows:

703 Direct examination by Mr. Glover:

Q. 1. Where do you reside? A. In St. Louis.

Q. 2. How long have you resided in St. Louis?

A. For twenty-five years.

Q. 3. Are you engaged in business? A. I am.

Q. 4. State what your business is. A. Paper business.

Q. 5. At what number? A. 217–'19 North Main street.

Q. 6. In the course of your business do you send or receive by railroad express freights and common freights in your business? A. I do.

Q. 7. Have you done any such business over the Iron Mountain railroad? A. Yes, sir.

Q. 8. Have you had occasion to purchase for your house or for your partners or for your employees, or has any member of your house or any of your employees had occasion for you or them, to purchase 1500-mile tickets or any other tickets or 1000-mile tickets for passenger travel over the St. Louis, Iron Mountain & Southern railway? A. Yes, sir.

Q. 9. Now, here is a question perhaps you do not want to answer; during what time was that?

A. I think no tickets of any kind have been purchased within a year, probably within two years; tickets for passenger travel have been purchased by our house for us or our commercial travelers going to Texas.

Q. 10. At what price were they purchased?

A. I am unable to say; I do not recollect.

Q. 11. What kind of tickets were they?

A. I don't remember whether regular passenger tickets or 1000-mile tickets.

Q. 12. Have any of your employees during the last year or since the 1st of May, 1880, traveled over the St. Louis and Iron Mountain railway's road? A. Yes, sir.

Q. 13. Under what circumstances did they go in regard to fare?

A. I think, sir, that during the past year our traveling man has gone into Texas from here by that road at least twice, and that he has traveled upon passes issued by the railroad.

Q. 14. Passes for which you paid or free passes?

A. Free passes.

Q. 15. Do you know under what circumstances the passes or either of them was issued? A. Yes, sir; I do.

704 Q. 16. Please state under what circumstances and what reason. A. I can state the reasons for issuing the passes as I understand them; they were that we were doing a great deal of business upon that railroad, and were accustomed to ship our freight on that road in preference to other roads.

Q. 17. On what train? A. Freight trains.

Q. 18. Any on passenger trains?

A. No, sir; occasionally small packages by express; not many of our goods are sent by express.

Q. 19. You do some express business over the road and some common freight business over the road? A. Yes, sir.

Q. 20. What amount of common freight, was it large?

A. Sometimes in quantities of a car-load.

Q. 21. At what time were the free passes issued, what time of the year this last year?

A. I cannot answer positively; my recollection is the last one was issued in August.

Q. 22. 1880? A. Yes, sir.

Cross-examination by Col. **Broadhead**:

Cr.-Q. 1. You say that you have a large amount of freight going over the Iron Mountain & Southern railway?

A. Yes, sir.

Cr.-Q. 2. For shipment South, to Texas and Arkansas?

A. Yes, sir.

Cr.-Q. 3. And that those passes were given you, as you suppose, in consideration for the amount of business you did over the road?

A. Yes; in consideration of our giving the preference in our shipments to that road; I never had any understanding about it; it was done, perhaps, as a matter of courtesy.

Cr.-Q. 4. You mean over the M., K. & T. road?

A. Yes; or over any other road going to Texas; it was our custom to ship our freight on the Iron Mountain & Southern railway, unless otherwise instructed by the consignees.

Cr.-Q. 5. But the amount of express business you do is very small? A. Yes, sir; it is not large.

Signature waived.

John A. Allen, of lawful age, being produced, sworn, and examined as a witness on the part of the plaintiff, testified as follows:

705 Direct examination by Mr. **Glover**:

Q. 1. Where do you reside? A. In St. Louis.

Q. 2. How long have you resided in St. Louis?

A. About 46 years.

Q. 3. In what business have you been engaged the last ten years? A. The wholesale boot and shoe business.

Q. 4. At what place is your business conducted?

A. Latterly on Washington Ave.

Q. 5. In the course of your business have you to pay for shipments of freight or the travel of your employees—by freight, I mean express and also common freight received and sent on railroad trains?

A. We ship freight frequently as freight, and often by express; rarely receive any.

Q. 6. What business have you done, if any, with the St. Louis, Iron Mountain and Southern railway?

A. I cannot say as to the amount, more or less every year shipping goods.

Q. 7. Both kinds, express freight and common freight?

A. Yes.

Q. 8. What has been the course of business in regard to railroad fares of your house, either your own or your employees, during the last year?

A. In the last year we have bought 1500-mile tickets.

Q. 9. How many?

A. I can't say; I do not remember; not more than one, I think, recently; the first one we bought was a thousand-mile ticket.

Q. 10. What did you pay for the 1500-mile ticket?

A. We have paid as high as $45.

Q. 11. And as low—— A. As low as $37.50.

Q. 12. What did you pay for the thousand-mile ticket?

A. Twenty-five dollars for the only one we ever bought.

Q. 13. Under what circumstances were those tickets sold?

A. We sent a salesman who had occasion to go over that road to the office of the company to sell the ticket if they were willing to do it.

Q. 14. Do you know what is the full price of 1500-mile tickets?

A. I do not.

Q. 15. Do you know whether what you paid was less than
706 the full price? A. I do not; I was under the impression
they were selling tickets to us as to others, that there was no
favor in the matter.

Q. 16. Do you or your house hold any of those 1500-mile tickets or thousand-mile tickets now?

A. One of our salesmen has a thousand-mile ticket.

Q. 17. What is your best opinion as to how many you have bought since the first of May last of that kind of tickets?

A. My impression would be not more than two, one 1500 and one 1000.

Q. 18. Now, about free passes, has anything of the sort been issued to you by the railroad, to your house or partner, or either of them, or employees?

A. Our salesmen have had passes to Texas.

Q. 19. How many? A. Within a year perhaps three or four, that would be my impression.

Q. 20. On what account were those passes issued; what was the understanding on which they were issued?

A. We had no special understanding; I think usually express or freight, on account of freight; we supposed they were because of the business that they had received from the house; some consideration of that kind; we had no special understanding.

Q. 21. You only inferred what you state?

A. We simply asked for them because we heard that others were getting them.

Q. 22. Do you know what is the price of a ticket from St. Louis to Texas when paid for? A. I do not, sir.

Q. 23. How far is it to Texas? A. That I don't know certainly.

Q. 24. Did the passes of which you speak cover any ground beyond Texarkana?

Objected to, as irrelevant.

A. No, sir.

Q. 25. Will you state to the examiner whether you have any other business than boots and shoes. A. No, sir.

Q. 26. You are not in the cotton business? A. No, sir.

Q. 27. You do not edit newspapers? A. No, sir.

Cross-examination by Col. THOROUGHMAN:

Cr.-Q. 1. Mr. Allen, you have for a long time been a wholesale dealer in boots and shoes, haven't you? A. Yes, sir.

707 Cr.-Q. 2. Do an extensive business for the Southwest? A. Very good business; yes, sir.

Cr.-Q. 3. Your establishment is about as large as any in the West of that character? A. No, sir.

Cr.-Q. 4. It is a large establishment?

A. Yes, among the old houses; long established in business.

Cr.-Q. 5. And you have since the Iron Mountain railroad has been constructed been a patron of that road?

A. More or less; yes, sir.

Cr.-Q. 6. And the favors shown to you by the reduction in tickets, if any, has been made to you, and passes extended to you, if I understand your idea, for the amount of freight you were giving to this railroad?

A. Yes, some consideration of that kind.

Cr.-Q. 7. When you were getting them you supposed they were passes on that consideration? A. Yes, sir.

Cr.-Q. 8. Can you tell us how many shipments you make annually over that road? A. No, sir; I cannot.

Cr.-Q. 9. Is it a daily or weekly occurrence with you to ship goods to the South over that road?

A. In the busy seasons a daily occurrence.

Cr.-Q. 10. That has been many years, hasn't it?

A. More or less since the road existed.

Cr.-Q. 11. I understand compared with your freight business your express business is insignificant?

A. Small, more or less small lots of goods sent by express.

Cr.-Q. 12. When you use express at all it is only when requested by the consignee of the articles sent, is it not?

A. Either that or we may have special reasons why we wish to send by express.

MR. GLOVER: Will you give some aggregate estimate of the amount of your trade to Texas annually, say, the last year; how many thousand or hundreds of thousand dollars has your trade aggregated from here to Texas?

A. I cannot approximate it without reference to our books.

JOHN M. SNOWDON, of lawful age, being produced, sworn, and examined as a witness on the part of the plaintiff, testified and said:

Direct examination by MR. GLOVER;

Q. 1. Where do you reside? A. In St. Louis.

708 Q. 2. How long have you resided in St. Louis? A. Ten years.

Q. 3. In what business are you engaged?

A. I am with F. Mitchell & Bro.

Q. 4. In what capacity? A. Cashier.

Q. 5. What place of business? A. 2nd and Chestnut.

Q. 6. What is the business of Mitchell & Bro.?

A. Wholesale grocers.

Q. 7. In the course of your business, or the business of the house, or any of your partners, what do you know of the amount of freights, common and express, which you have done over the St. Louis, Iron Mountain & Southern railroad?

A. Well, we ship goods over that road.

Q. 8. By what conveyance?

A. As freight, and some as express.

Q. 9. Now, what do you know of the purchase, if anything, of 1500-mile tickets and 1000-mile tickets, for any of your employees, or any members of your firm, or your house or yourself, over that road?

A. We have bought 1500-mile tickets for our salesmen.

Q. 10. How long ago? A. November 8th we bought one.

Q. 11. November, 1880? A. Yes, sir.

Q. 12. How much did you pay for it? A. $35.

Q. 13. Now, between that and the first of May last, how many did you buy?

A. I think that is the only one we bought between those dates.

Q. 14. Do you know what is the full price of a 1500-mile ticket? A. No, sir.

Q. 15. Can you state for what reason the ticket was sold to you for thirty-five dollars, what was the inducement?

A. I suppose it was in consideration of our shipment over the Iron Mountain railroad.

Q. 16. Have you had, or have any of the employees of your house or partners of your house had, a pass over that road?

A. Yes, sir.

Q. 17. Just please state what passes.

A. Our Texas salesmen had a pass through to Texas, one that I know of.

Q. 18. Issued when? A. I cannot give the date.

709 Q. 19. What year? A. 1880.

Q. 20. In the summer, spring, or winter?

A. I think it was in the summer.

Q. 21. Now, can you tell what is the approximate amount of tonnage you have sent and received over the St. Louis, Iron Mountain and Southern railroad? A. No, sir; I cannot.

Q. 22. In the course of a year would it amount to one hundred thousand dollars?

A. Yes; I presume it would; I cannot tell exactly, but I should judge in that neighborhood.

Cross-examination by Mr. THOROUGHMAN:

Cr.-Q. 1. Mr. Snowdon, your house is a wholesale grocery establishment? A. Yes, sir.

Cr.-Q. 2. You spoke of a salesman going to Texas.

A. Yes, sir.

Cr.-Q. 3. Explain the object of his going to Texas; is it not to solicit business for your house? A. Yes, sir.

Cr.-Q. 4. And by that means to increase the sale of your goods? A. Yes, sir.

Cr.-Q. 5. Which goods, when sold, you ship over the St. Louis, Iron Mountain & Southern railroad?

A. Unless we are instructed to ship otherwise.

Cr.-Q. 6. Left to your volition, you ship over the Iron Mountain; if the consignee requests you to ship over another line you do so; is that it?

A. Yes; we ship everything over the Iron Mountain, I believe, unless otherwise instructed; mostly so, anyhow.

Cr.-Q. 7. You stated one of your salesmen had a pass to Texas; do you know how it was issued, whether issued by the Iron Mountain or Texas Central, or did he have a pass simply to the State line of Texas? A. To Texarkana.

Cr.-Q. 8. To Texarkana, simply to Texarkana?

A. Yes, sir.

Cr.-Q. 9. Over the Iron Mountain railroad? A. Yes, sir.

Cr.-Q. 10. But his duties were performed for you in Texas?

A. Yes, sir.

Cr.-Q. 11. You had another man to work the field this side in Arkansas? A. Yes, sir.

Cr.-Q. 12. You do not remember whether that was issued the beginning of last year or not?

710 A. I think it was in the summer; I cannot tell exactly.

Cr.-Q. 13. What are your habits of shipping South; daily, weekly, monthly, or how; in the busy season isn't it of daily occurrence with you? A. Almost daily occurrence.

Cr.-Q. 14. Do you mean you are approximating pretty near the amount you sell to the Southwest over the Iron Mountain when you say one hundred thousand dollars?

A. No, sir; I cannot.

Cr.-Q. 15. You do not want to be confined to any such sum as that? A. No, sir.

Cr.-Q. 16. Your business reaches largely over a million annually, don't it—the whole business? A. I cannot tell exactly.

Cr.-Q. 17. Where do you seek your trade—your trade outside of your local trade; isn't that in Arkansas and Texas?

A. Arkansas and Texas; we have a trade in almost all the Southern States, but principally in Arkansas and Texas.

Cr.-Q. 18. You also ship over the St. Louis, Iron Mountain & Southern railway to the Southern States; go to Belmont and across the Mississippi to Tennessee, Kentucky, and the other Southern States? A. Yes, sir.

Cr.-Q. 19. Can you say you ship less than $300,000 worth of property annually? A. I cannot state any amount at all.

Cr.-Q. 20. And the favors you have had you think have been put in the way of passes to salesmen, and a reduction, if reduction was made in the tickets, as you understand it, was based on the large shipments your house was making over this road? A. Yes, sir.

Signature waived.

J. H. WEAR, of lawful age, being produced, sworn, and examined as a witness on the part of the plaintiff, testified as follows:

Direct examination by Mr. GLOVER:

Q. 1. Where do you reside? A. In St. Louis.

Q. 2. How long? A. 18 years.

Q. 3. What is your business? A. Wholesale dry goods.

Q. 4. At what place are you in business?

A. 6th and St. Charles.

Q. 5. How long have you been in that business?

A. I have been in the wholesale dry goods business 16 years.

711 Q. 6. In the course of your business do you receive and send over the railroads freights, both express and common?

A. Yes; we do.

Q. 7. What business, if any, have you done over the St. Louis, Iron Mountain & Southern?

A. We have done quite a large business, sir.

Q. 8. What would it approximate during the year; I mean the value of the goods transported over the Iron Mountain railroad by your house?

Objected to, as irrelevant and incompetent.

A. It would be only an approximation; I would say half a million dollars; possibly more; rather think more than less.

Q. 9. Does that include the two kinds of freight, express and common? A. Yes; our express business is very light.

Q. 10. Now, have you had occasion to purchase for yourself, or for your house, or any member of it, or any of your employees, 1500-mile tickets for passengers or 1000-mile tickets for passengers over the St. Louis, Iron Mountain & Southern railroad? A. We have bought 1500-mile tickets recently.

Q. 11. At what time? A. Since the first of January; I do not remember the date; since the first of January, 1881.

Q. 12. In 1880 did you purchase any? A. Yes, sir.

Q. 13. How many in 1880? A. I cannot tell you, sir.

Q. 14. As many as half dozen? A. No, sir.

Q. 15. As many as three? A. Yes, sir.

Q. 16. What did you pay for those tickets? A. $37.50.

Q. 17. Do you know if you purchased them at less than full rates?

A. Well, I cannot say, sir; I have paid more than that for tickets, but I cannot say the rate it was that I bought them.

Q. 18. What was the consideration for which they were issued to you at $37.50, if any?

A. I do not know, sir; because other roads sold tickets for less money.

Q. 19. Did you or your house or any of your employees have during the last year a pass over the St. Louis, Iron Mountain & Southern Railway Company for travel over that road?

A. Yes; some of our employees had.

Q. 20. How many passes? A. I believe two, sir.

Q. 21. Were they paid for?

712 A. I cannot tell you, sir, whether they were or not; a salesman received them; the house did not pay for them; I don't know whether they did or not.

Q. 22. What distances, if you know, did the passes cover; from what point to what point?

A. From St. Louis to Texarkana, sir.

Q. 23. Texarkana is right at the northern line of Texas?

A. I believe it is, sir.

Q. 24. What did you pay for those that you bought since the first of January; the 1500-mile tickets?

A. Thirty-seven dollars and a half.

Q. 25. What did you pay for those you had before?

A. We have paid about as high as $45; three cents a mile.

Q. 26. How far is it from here to Texas?

A. I cannot tell you.

Cross-examination waived.

Signature waived.

James L. Sloss, of lawful age, being produced, sworn, and examined as a witness on the part of the plaintiff, testified as follows:

Direct examination by Mr. Glover:

Q. 1. Where do you reside? A. In St. Louis.

Q. 2. How long? A. 25 years.

Q. 3. Are you in business here? A. Yes, sir.

Q. 4. How long? A. 20 years.

Q. 5. What business? A. Commission merchant.

Q. 6. What is the name of your house?

A. Gilkerson & Sloss.

Q. 7. What place of business? A. 120 North Main.

Q. 8. In the course of your business have you had occasion to send and receive freight from railroads terminating in St. Louis, both express and common freight? A. Yes, sir.

Q. 9. What business, if any, of that sort have you done over the St. Louis, Iron Mountain & Southern railway?

A. We have received consignments of cotton, hides, pelts, and we have shipped flour, bacon, and groceries.

Q. 10. Give an approximate estimate of the amount per annum of goods sent over that road or received over it.

A. I could give somewhat of receipts, but not of shipments.

713 Q. 11. Give an idea of the amount.

A. Last year, the year closing the first of September, we received about three millions dollars worth of cotton, fifty-two thousand bales.

Q. 12. Now, have you done any express business over the St. Louis, Iron Mountain & Southern railway through its express department? A. Yes, sir.

Q. 13. I mean since last April?

A. Yes; we have done through both expresses.

Q. 14. Both the Southern Express Company and the express department of the railway? A. Yes, sir.

Q. 15. Give some estimate of the amount of value of express tonnage which you sent and received.

A. It is very slight in express freights; we have sent money.

Q. 16. Have you had occasion to purchase passenger fare tickets, 1500-mile tickets, and 1000-mile tickets, or any other fare tickets over that road?

A. Yes; we purchased 1500-mile tickets for our traveling men.

Q. 17. During the period from June first last to the present time? A. Yes; before.

Q. 18. How many tickets have you purchased?

A. Well, sir, I cannot tell you how many, though——

Q. 19 Any idea whether half dozen, three or two?

A. All of a half dozen.

Q. 20. What did you pay, Mr. Sloss?

A. I don't know; my impression is $35 or $37.50; that is what I have been paying for two years.

Q. 21. Have you bought any 1000-mile tickets?

A. I think not; all 1500-mile tickets.

Q. 22. Have you or your house, or members of the firm or employees of the firm, held passes over that road, or a pass?

A. I have, sir; no other.

Q. 23. During what time, Mr. Sloss? A. I have had one for three years.

Q. 24. Had any since June last, 1880?

A. I had one prior to that; I have an annual pass.

Q. 25. You had a pass to cover the whole year of 1880?

A. Yes, sir.

Q. 26. Have you got one for 1881? A. Yes, sir.

714 Cross-examination by Col. THOROUGHMAN:

Cr.-Q. 1. Last year, closing the fiscal year for September, you found you had received three millions dollars worth of cotton?

A. Estimating it by sixty dollars a bale by the average of last year's crop.

Cr.-Q. 2. That estimate includes all other property received by you over this road? A. Yes, sir.

Cr.-Q. 3. Can you tell what other property would add to it sent over that road and received by you?

A. Very little coming this way; but, I suppose, not less than one hundred thousand dollars the other way.

Cr.-Q. 4. Coming this way what could you add to this?

A. Anything else is——

Cr.-Q. 5. You deal principally in cotton?

A. Principally cotton factors.

Cr.-Q. 6. Your express business, I understand, bears no relation at all to cotton and other goods you received by freight?

A. No, sir.

Cr.-Q. 7. Your business is that of a commission merchant?

A. Yes, sir.

Cr.-Q. 8. You manage it, do you not, by [illegible] monly called, to the country, to different States of the Union? A. Yes, sir.

Cr.-Q. 9. Soliciting this business? A. Yes, sir.

Cr.-Q. 10. They go to Texas and solicit this cotton and other commerce you have received?

A. Yes; Texas and Arkansas.

Cr.-Q. 11. The Missouri, Kansas & Texas railroad competes with the Iron Mountain railroad?

A. Yes, sir.

Cr.-Q. 12. State if you have not rather favored the St. Louis, Iron Mountain & Southern railroad in your past business years over the M., K. & T. A. Always have.

Cr.-Q. 13. That fact of your favoring that road has been well understood by the officials of the Iron Mountain railroad, has it not? A. Yes, sir.

Cr.-Q. 14. The consideration for this annual pass you have had the last five years, and now have, and other favors, if you have had favors shown you, have been for the consideration of your patronage, hasn't it?

715 A. I never regarded it exactly as a matter of favor.

Cr.-Q. 15. I say if it is a favor; I do not think it is——

A. A kind of joint interest.

Cr.-Q. 16. But if there is any consideration for it in your mind, that is it?

A. The business we were working up for the road.

Cr.-Q. 17. You and other prominent merchants of the city have for years been trying to draw the commerce of the Southwest, including the States of Louisiana, Texas, and Arkansas, and the Southeast to Missouri, to this city? A. Yes, sir.

Cr.-Q. 18. To that end you employ men to travel in all those States and Territories along the Southwest?

A. Texas, Arkansas, and southern Missouri.

Cr.-Q. 19. That business you are yourself working up, with other meachants coming to the city who necessarily came over that road?

A. Yes, sir.

Cr.-Q. 20. Your men had to travel over it to reach those territories? A. Yes, sir.

Cr.-Q. 21. You succeeded in your effort until last year your receipts of cotton reached the enormous sum of three millions of dollars? A. Yes, sir.

Cr.-Q. 22. I understand in your express matter you patronized alternately the Southern Express Company and the Iron Mountain railroad?

A. Sometimes one and sometimes the other; any cutting, I gave always to the cheapest man.

Signature waived.

H. T. Simon, of lawful age, being produced, sworn, and examined as a witness on the part of the plaintiff, testified as follows:

Direct examination by Mr. Glover:

Q. 1. Where do you reside? A. In St. Louis.

Q. 2. How long? A. Thirty-one years.

Q. 3. Are you in business? A. I am.

Q. 4. What? A. Wholesale dry goods.

Q. 5. How long? A. Thirty years.

Q. 6. Does the nature of your business require you to send and receive freights by railroads, both express and common freight? A. They do, sir.

Q. 7. Have you done any of that business over the St. Louis, Iron Mountain & Southern Railway Company? If so, please state it. A. I have. 716

Q. 8. To what extent has your house shipped freights over this road, and received freights over this road during the last year, say from January, 1880.

A. You mean the Belmont branch?

Q. 9. Yes, all branches?

A. To approximate, I might name, about $250,000.

Q. 10. How much of that was express?

A. It would be impossible to state without examination.

Q. 11. Now, in the prosecution of your business, is it necessary for your house, or its employees, to travel over this road, the St. Louis, Iron Mountain and Southern?

A. Yes, sir; it is for the employees.

Q. 12. Do you know for the purposes of your business, your house, or yourself, or employees have bought passenger fare tickets over that road? A. They did, sir.

Q. 13. What class of tickets? A. I am unable to state that.

Q. 14. What did you pay for them?

A. I am also unable to state that; I have investigated the matter; it seems our cashier turned money in bulk to travel on, and returns were made to him for the expenditure; no entry made on the book of the exact amount paid for a ticket.

Q. 15. You cannot tell then what sum was paid?

A. I cannot.

Q. 16. Have any of your employees held a pass over that road?

A. Our Texas man has had a pass.

Q. 17. To cover what time?

A. I think there was no specified time.

Q. 18. When was it issued?

A. The pass was taken out; whenever he goes to Texas, on return he gets a pass, that is my understanding.

Q. 19. Does he pay for it, or is it free? A. It is free.

Q. 20. How many of those passes have been held since June 1st, last, by any employee of your house, or member of your house?

A. I think one since June 1st.

Q. 21. A pass for a single trip, or a pass during a year?

A. I think it must have been a yearly pass, because he wanted to come up about the first of January, and his pass expired and he could not get it renewed in time; I judge it was an annual pass. 717

Q. 22. Are you in any other business than dry goods?

A. No, sir.

Q. 23. Not in the cotton business? A. No, sir.

Q. 24. Do not edit a newspaper? A. No, sir.

Q. 25. What considerations were free passes issued to your traveling agent; what was the motive?

A. The free pass that was to encourage the Texas trade; that is my understanding.

Q. 26. To encourage your trade or the trade of the Iron Mountain & Southern railroad also?

A. I suppose it benefits both at the same time.

Cross-examination by Col. THOROUGHMAN:

Cr.-Q. 1. What proportion in weight does the goods you ship over the Iron Mountain & Southern railway bear to the express matter you send over the same road?

A. I should suppose the express matter, if you want an estimate, would not exceed ten per cent.

Cr.-Q. 2. Do not all other railroads in reaching Texas give facilities to merchants of this city as well as the Iron Mountain?

A. I do not think we ever made an effort to get one; yes we have, but we did not succeed though.

Cr.-Q. 3. You are one of the largest merchants in this city, and your house has been established thirty years?

A. Yes, sir.

Cr.-Q. 4. Now, isn't it a well known fact to the officials of the Iron Mountain railroad that you gave that largely your preference of trade?

A. I think that is the understanding; for the Texas trade certainly and the Arkansas necessarily.

Cr.-Q. 5. You had been doing it long before a dispute of this sort came up? A. That is my understanding.

Signature waived.

GEO. F. TOWER, of lawful age, being produced, sworn and examined as a witness on the part of the plaintiff, testified as follows:

Direct examination by Mr. GLOVER:

Q. 1. Where do you reside? A. In St. Louis.

Q. 2. How long? A. About thirty years, something over.

718 Q. 3. Engaged in business? A. Yes, sir.

Q. 4. What business? A. Wholesale grocery business, also manufacturing.

Q. 5. How long have you been in business in the city?

A. Over thirty years.

Q. 6. At what place? A. 525 North 2nd street.

Q. 7. In the course of your business do you send and receive freight over the railroads? A. Yes, sir.

Q. 8. Do you do any of that sort of business over the St. Louis, Iron Mountain & Southern railroad. If so, please state it.

A. We have shipped a good many goods over that road since it was built.

Q. 9. What class of freights?

A. Groceries and manufactured goods, candles; ship by freight commonly.

Q. 10. By common freight? A. Yes, sir.

Q. 11. By express freight? A. A very small portion of the business by express.

Q. 12. Have you had occasion, or your house, or your employees, or any member of your house, to purchase passenger fare tickets over the St. Louis, Iron Mountain & Southern Railroad? A. Yes; we have had a good many.

Q. 13. How many during the last year?

A. I should think six or eight during 1880.

Q. 14. What did you pay for your 1500-mile tickets?

A. I think we have had both sorts, 1500-mile tickets and 1000-mile tickets; I think lately 1500-mile tickets.

Q. 15. What did you pay?

A. I cannot tell you; I think sometimes we paid as low as twenty-five dollars, and sometimes thirty-five.

Q. 16. That is for 1000-mile tickets?

A. I think we have 1500-mile tickets as low as twenty-five dollars, and we have had passes, too.

Q. 17. What passes have you had?

A. To Texerkana several times during the last year; I think very likely a half dozen.

Q. 18. What conditions were they issued on?

A. I do not think any special agreement was made at all; we do our business, all that we can do, on the Iron Mountain road, and always have; we have had passes by the M., K. & T. as well as the Iron Mountain railway for employees.

719 Cross-examination by Col. THOROUGHMAN:

Cr.-Q. 1. You are manufacturing candles, soap, and such articles?

A. Yes, sir.

Cr.-Q. 2. You are reaching the Southwestern trade?

A. Yes; I think in regard to that business—that manufacturing business—we had more favors in the way of passes on account of that manufacturing business being new, and we wanted to reach——

Cr.-Q. 3. You were introducing it?

A. I think the Iron Mountain people did what they could to help us introduce our goods.

Cr.-Q. 4. Can you give the aggregate tonnage shipments you might receive over the road in your other business—wholesale grocery business.

A. I think probably three to four hundred thousand last year.

Cr.-Q. 5. State if you have not during the existence of that road used your best efforts in aiding it to all the commerce you could.

A. Yes, sir.

Cr.-Q. 6. Hasn't that fact been well known to the officers of the road for the last ten or twelve years?

A. I presume so; it is very much to the [illegible] chant in town to do everything he could for the road.

Cr.-Q. 7. You say your proportion of the shipments by express, compared with common freight, is insignificant?

A. Yes; we do not ship many goods, but receive a good deal of money by express; we ship comparatively few goods; I do not think we ship, I doubt if we ship, twenty-five thousand dollars of express matter a year.

Cr.-Q. 8. You say in aiding you to introduce a new article of commerce, soap, candles, &c., the M., K. & T. also gave your employees passes?

A. Yes; had them both ways; I never solicited a pass in person, except two years ago; I think I did talk with Mr. Frink about our new business, because it was a very difficult thing to compete——

Cr.-Q. 9. Now, about the twenty-five dollars for the 1500-mile tickets? A. I may be entirely mistaken.

Cr.-Q. 10. I think you are, and I wish to refresh your memory; didn't you get last May one, two, or three 1000-mile tickets, and didn't they cost $25, and the others $37.50?

720 A. That may be; I did not know anything about the object of this meeting, and I did not refresh my memory at all; we bought one ticket since the first of this month, and on that I paid the rate of two and a half cents a mile.

Cr.-Q. 11. Now state if the M., K. & T. road did not keep these same kind of tickets at regular shipper's rate?

A. I think so.

Cr.-Q. 12. All roads do as far as you know, don't they?

A. I think so; as far as I know, we buy them of every road that leads out of St. Louis.

Signature waived.

J. M. Hamilton, of lawful age, being produced, sworn, and examined as a witness on the part of the plaintiff, testified as follows:

Direct examination by Mr. Glover:

Q. 1. Where do you reside?

A. St. Louis, 5th and Washington avenue.

Q. 2. How long have you been in business there?

A. Only there the last eight months; I have been in business—the shoe business—the last fifteen years.

Q. 3. What is your business? A. Wholesale boots & shoes.

Q. 4. If you have had any dealings in the way of express matter, freight, or common freight over the Iron Mountain railroad, will you please state it? A. Yes, sir.

Q. 5. To what extent have you done business over that road in the last year?

A. As near as I could state, over the two roads to Mississippi about a million of dollars' worth of boots and shoes; I suppose $750,000 would go over the Iron Mountain railroad.

Q. 6. What part of that would be express matter?

A. Not over five per cent.; probably not over two and a half per cent.

Q. 7. What do you know of the purchase by your house for any member of your house or employee of your house of passenger fare tickets over the St. Louis and Iron Mountain railroad?

A. I do not know definitely what they paid; I am satisfied they have had them less than two and a half; I think they bought some thousand-mile tickets at $25, and 1500 at $37.50, and they have had some passes.

721 Q. 8. How many of those tickets have been held by your house or members or employees of it since the last of May, 1880?

A. I think they traveled almost entirely with free passes, from the fact our shipments are large, larger probably than any one in our line in our trade, and I think they have traveled mostly by free passes.

Q. 9. Free passes issued to you by whom?

A. By the Iron Mountain railroad to Texarkana.

Q. 10. How many of them have you had since last June?

A. Probably five.

Q. 11. Have you had any since 1881 set in?

A. I do not know whether we have or not.

Q. 12. How many do you think you purchased of thousand-mile tickets and 1500-mile tickets?

A. Well, I do not know; we have about four men traveling in the country, or five or six; we do a good large Mississippi business and in Tennessee, and going over that road they go on both sides of the river.

Q. 13. What were the inducements, if you know, to issue passes?

A. In consideration, I suppose, of our shipments upon the road.

Cross-examination by Col. THOROUGHMAN:

Cr.-Q. 1. You named the sum of a million dollars shipped over the two roads; that is a small estimate, is it not?

A. Yes, sir.

Cr.-Q. 2. State if upon investigation or reflection upon the subject if it would not come nearer a million and a half than a million?

A. I have been thinking about it; our business is nearly two millions, and I know the bulk of it is over those two roads. I know I always gave the preference to the Irom Mountain railroad.

Cr.-Q. 4. Now, you are soliciting business by those agents of yours that you send out; how far southwest from here do you go; as far as Galveston? A. Within fifty miles.

Cr.-Q. 5. How near the line of Mexico do you go; as near as San Antonio? A. Yes, sir.

Cr.-Q. 6. Your idea in sending your soliciting men down there is to cover the entire territory of Texas? A. Yes, sir.

722 Cr.-Q. 7. You get facilities from Texas roads, I presume?

A. I presume they do; from the M., K. & T.; I know we get some passes.

Cr.-Q. 8. But you did not get as many [illegible] T. road?

A. No; that is one reason we favor the Iron Mountain; I [illegible] think the Iron Mountain has refused us; I know we got [illegible] $37.50; I cannot state very definitely whether that is the [illegible] the first of January or not; I should have to refer to the [illegible]

Cr.-Q. 9. The M., K. & T. people keep an office and agency in the city, and know you as a merchant? A. Yes, sir.

Cr.-Q. 10. And know who you merchants favor?

A. Yes, sir.

Cr.-Q. 11. If you favored the Iron Mountain railroad with freight you were not so apt to get passes from them as if you gave it to them? A. No, sir.

Cr.-Q. 12. State, if of this sum of tonnage and money you have shipped over this road, whether your per cent would not be less than two and a half by express. You are in a wholesale business, are you not?

A. Yes; I cannot come nearer than two and a half to five per cent.

Cr.-Q. 13. Besides the passes, you got some tickets for your agents to travel over the Iron Mountain railroad, 1000-mile tickets and 1500-mile tickets, and in other cases you got passes, and the understanding was in getting those favors it was in consideration of your large shipments over the road?

A. Yes, sir.

Signature waived.

James M. McComb, of lawful age, being produced, sworn, and examined as a witness on behalf of the plaintiff, testified as follows:

Direct examination by Mr. Glover:

Q. 1. Where do you reside? A. In St. Louis.

Q. 2. How long? A. Been here going on ten years.

Q. 3. Are you in business? A. Yes, 525 Main street.

Q. 4. What business? A. Hardware business.

Q. 5. In the course of your business have you had occasion to send and receive freight over the railroads?

A. Yes, sir; every day.

723 Q. 6. State whether you have done any freight business, express or common freight, over the St. Louis, Iron Mountain & Southern railroad. A. Yes, sir; daily.

Q. 7. How much express?

A. Our express is very large, indeed. I cannot tell what it would be, but our goods are very heavy.

Q. 8. How far South have you used the St. Louis, Iron Mountain & Southern railroad? A. To Texarkana.

Q. 9. During the last year, say, from the first of June to the present time, state, if you please, what arrangements you have had in regard to your employees or members of your house, for the business of the house, traveling over the road.

A. Well, sir, we have had some passes over the road, and we have had tickets, 1000-mile tickets; I do not know whether 1500-mile tickets; but we have bought 1000-mile tickets I know.

Q. 10. What did you pay for 1000-mile tickets?

A. I referred to a letter before coming here from a young man from Texas, complaining the road charged three cents a mile; he was getting them less than that previously, but they charged him since the first of January those rates; he is making complaint, and is satisfied other houses are getting it for less, and he wants a rebate made on it; we ship a large amount of goods over the road, and think we are entitled to as much favor as any one.

Q. 11. Do you know what the house or employees have paid for 1000-mile tickets, say, since June, 1880?

A. I do not know that I can tell exactly; when my young men are here we give them money, and they buy the tickets themselves; I do not know what they pay; we have had occasion ourselves when they are absent; I think they limit them one to six months, from the first of January to July, and we have them renewed, and my impression is we had to buy them ourselves sometimes, but I do not know what price exactly.

Q. 12. Tell us about the passes.

A. Our young men have received passes, sir.

Q. 13. For what?

A. For going over the road as far as Texarkana.

Q. 14. How many have they had?

A. I don't know; we have two young men in Arkansas and one in Texas; I think they all have had passes; I am not fully posted up in regard to it.

724 Q. 15. Have those passes been held by your employees since June, 1880?

A. I am not able to say; my impression is we most always had passes, for we had a large amount of freightage over the road, and gave that road the preference.

Q. 16. For what reasons has the road issued passes to your house?

A. In consideration of the amount of goods we sell in that country.

Q. 17. The business you do over the road?

A. Yes; those men go out for the purpose of soliciting business, and getting orders and goods forwarded over the road.

Cross-examination by Col. THOROUGHMAN:

Cr.-Q. 1. Your young man goes over the road to solicit business? A. Yes, sir.

Cr.-Q. 2. And gets orders sent by mail? A. Yes.

Cr.-Q. 3. And you respond by forwarding the goods right after him over the road? A. Yes, sir.

Cr.-Q. 4. You have received favors not only since last June, but in years past, over the road? A. Yes, sir.

Cr.-Q. 5. It is the custom for this road and others to favor large patrons? A. I understand so.

Cr.-Q. 6. What has been the aggregate amount of shipment over that road annually by your house in dollars?

A. I don't know as I can tell exactly; I expect not much short of three hundred thousand.

Cr.-Q. 7. It might reach a much larger sum?

A. Yes; our business is much larger than that, and our largest business is in the country.

Cr.-Q. 8. You seek that sort of trade in your run over the Iron Mountain?

A. Yes; and give that road the preference.

Cr.-Q. 9. And have done that for years past? A. Yes.

Cr.-Q. 10. And have been receiving those favors for years past, haven't you? A. Yes, sir; we have.

Cr.-Q. 11. There has been no change in the favors and courtesies extended to you since last June, has there?

A. No, sir.

Cr.-Q. 12. They are the same as before?

A. No, sir; I tried to get a pass myself the other day, and they refused to give it to me to Hot Springs.

725 Cr.-Q. 13. That was on private business, though?

A. Yes, a matter of pleasure, I suppose; but I believe they do not refuse to give it to our young men when they go out on business specially.

Signature waived.

At this point the further taking of depositions in this case was adjourned until 11 o'clock Monday, January 17, 1881.

January 17, 1881. Parties met pursuant to adjournment, and by consent of parties adjourned until January 24, at 3 p. m.

St. Louis, *January* 24, 1881.

Parties met pursuant to adjournment.

O. W. Ruggles, being re-called, testified as follows:

Direct examination by Mr. Glover:

Q. 1. Please state whether you have now in your possession the list of thousand-mile tickets and fifteen hundred-mile tickets which have been sold by the St. Louis, Iron Mountain and Southern railroad at less than the regular rates from April 23d, 1880, to January 8th, 1881, inclusive?

A. I have the list as furnished me by J. W. Wallace, the auditor of the company, who keeps all the accounts of the company, and is the only one who has a record of such.

Q. 2. Have you it now in your possession?

A. Yes, sir; I can't swear to its being correct, because it is not made out by me. It is made out by the auditor of the company. I made the request of him for the list according to the letter of Mr. Agee. It specifies the number of tickets sold at the different rates less than the regular rate.

Plaintiff's counsel having received from the witness a paper purporting to be a statement of thousand-mile tickets and fifteen hundred-mile tickets sold at the general ticket office and the St. Louis "A" office from April 23d, 1880, to January 8th, 1881, inclusive, which is here marked by the examiner Exhibit No. 24; plaintiff's counsel returns said paper to the witness, and asks him if he will explain it; what is the first column?

A. This column is thousand-mile tickets.

Q. 3. What is that 30?

A. That is the regular rate at which they sold the thousand-mile tickets to any one who might apply at the office. Anybody can buy that ticket.

726 Q. 4. What is the 25? A. Twenty-five dollars. That is what the tickets sold for upon the order of the general superintendent and general freight agent at special rates.

Q. 5. That is, sold at less than the regular rate?

A. Yes, sir; that is, below.

Q. 6. What is the 20 in the next column?

A. Same as the 25.

Q. 7. And the 18? A. Same as the 25.

Q. 8. And the 22.50? A. The same as the 25.

Q. 9. What is the 15? A. Same as 25.

Q. 10. Then the first column means there were four tickets sold? A. From the general ticket office, our own office, during the several months while we were selling some of these tickets in our own office. Lately we have not.

Q. 11. Four sold at thirty dollars?

A. Yes, sir; and at our regular office, St. Louis "A" office, 282 were sold at the regular rate.

Q. 12. Six were sold for twenty-five dollars? A. Yes, sir.

Q. 13. And eight for twenty-five? A. Yes, sir.

Q. 14. And ten for twenty? A. Yes, sir.

Q. 15. And one for eighteen? A. Yes, sir.

Q. 16. And two for twenty-two and a half? A. Yes, sir.

Q. 17. Eleven for fifteen? A. Yes, sir.

Q. 18. And one for 14.75? A. Yes, sir.

Q. 19. Now, the total of the thousand-mile tickets sold for thirty dollars is 286? A. Yes, sir.

Q. 20. And the total sold for twenty-five dollars is 14?

A. Yes, sir.

Q. 21. And the total sold for twenty dollars is ten?

A. Yes, sir.

Q. 22. And the total sold for eighteen dollars is one?

A. Yes, sir.

Q. 23. And the total sold for 22.50 is two? A. Yes, sir.

Q. 24. And the total number sold for fifteen is eleven?

A. Yes, sir.

Q. 25. And the total sold for 14.75 is one? A. Yes, sir.

Q. 26. This next statement; what is that?

A. Fifteen hundred-mile tickets sold at the regular rates, and at these special rates.

Q. 27. The fifteen hundred-mile tickets sold at the regular rate is 138? A. Yes, sir.

727 Q. 28. And the number sold for forty-five dollars is eight, and the number sold for 37.50 is ninety-three, and the number sold for $35 is 251, and the number sold for $33.25 is 7, and the number sold for twenty is one? A. Yes, sir.

Defendant's counsel admits that said statement, Exhibit 24, signed "Respectfully, J. W. Wallace, Auditor," is correct.

WITNESS: We have taken the St. Louis "A" office and our own office, because only at those two offices are any tickets sold at special rates. These tickets are sold at the Union Depot, and they are all sold at the regular rate. There is no reduction there at all.

Plaintiff's counsel produces and files as evidence a paper purporting to be "Classification of freights established by the Railroad Commissioners of the State of Missouri, as provided in an act to regulate charges of all railroad companies, etc.," approved March 29th, 1875, as follows:

Counsel for defendant admits that said paper is the act of the railroad commissioners, and it is the copy of the order of said commissioners, being classification of freights as aforesaid, and is to be used in evidence, without further proof, so far as competent and relevant, but defendant objects to the same as irrelevant and incompetent.

Plaintiff's counsel produces and files as evidence in this case paper purporting to be limitation of charges on freight, by order of the railroad commissioners, at St. Louis, Missouri, June 25th, 1878.

Paper marked Exhibit 26, and the same accompanies this deposition.

Defendant's counsel admit said paper, Exhibit 26, to be a true copy of the order of the railroad commissioners, in that behalf, and that it is on file as a record in the office of said railroad commissioners, but say that it is incompetent and irrelevant.

Plaintiff's counsel produces before the examiner a book with the following title: "Acts passed at the ninth session of the General Assembly of the State of Arkansas, which was begun and held at the Capitol, in the city of Little Rock, on Monday, the 1st day of November, 1852, and ended on Wednesday, the 12th day of January, 1853, published by authority, Arkadelphia, Arkansas, R. L. P.
728 Hughes, State Printer, 1853," and reads from the same in evidence in this case "An act to incorporate the Cairo & Fulton Railroad Company," in the words and figures following, to wit:

An act to incorporate the Cairo & Fulton Railroad Company, approved January 12th, 1853.

SECTION 1. Be it enacted by the General Assembly of the State of Arkansas, as follows:

Edward Cross, D. J. Chapman, Henry K. Hardy, B. C. Totten, John R. Hampton, John N. Mitchell, H. P. Poindexter, A. S. Huey, Wm.

E. Davidson, J. M. Curran, W. C. Bevans, W. E. Ashley, and Thos. J. Blackmore:

And all such persons as shall hereafter become stockholders in the company hereby incorporated shall be a body politic and corporate, by the name and style of the "Cairo and Fulton Railroad Company," and under that name and style shall be capable of suing and being sued, impleading and being impleaded, defending and being defended against, in law and in equity, in all courts and places whatsoever, in like manner and as fully as natural persons; may make and use a common seal and alter or renew the same at pleasure, and by their corporate name and style shall be capable in law of contracting and being contracted with; shall be and are hereby invested with all the powers and privileges, immunities and franchises, and of acquiring by purchase, donation, or otherwise, and of holding and conveying real and personal estate, which may be useful to carry into effect fully the purposes and objects of this act.

SECTION 2. The said corporation is hereby authorized and empowered to survey, locate, construct, complete, alter, maintain and operate a railroad from a point on the Mississippi river, opposite the mouth of the Ohio, in the State of Missouri, by way of Little Rock, to the Texas boundary line, near Fulton, in Arkansas, with one or more branches to the western boundary line of this State, with the view of entering the northeastern and the northwestern portions of Texas, and there connecting with projected railroads in that State, from the bay of Galveston, running up the valleys of the Brazos and Trinity rivers; said company may also branch and extend their said road to any other points within this State; provided the same shall not conflict with the franchises of any other railroad company; and provided further, that said company shall obtain the right of way through the State of Texas, on such route as shall be deemed most expedient, with as many lines of rails or tracks they shall choose to make.

SECTION 3. The said corporation shall have right of way upon, and may appropriate to its sole use and control, for the purposes contemplated therein, land not exceeding one hundred feet in
729 width on each side of, and through its entire length, may
enter upon and take possession of, and use all and singular any lands, streams and materials of any kind for the location of depots and stopping stages, for the purpose of constructing bridges, dams, embankments, excavations, spoil banks, turn-out engine houses, shops and other building necessary for the construction, completing, altering, maintaining, preserving in complete operation of said road; all such lands, waters, materials, and privileges belonging to this State are hereby granted to said corporation, for said purposes; but when owned or belonging to any person, company, or corporation, and cannot be obtained by voluntary grant or release, the same may be taken and paid for, if any damages are awarded, in the manner provided for by law; provided, nothing in this section contained shall be so construed as to authorize the said corporation to interrupt the said navigation of said streams.

SECTION 4. The capital stock of said corporation shall be one million five hundred thousand dollars, which may be increased from time to time to any sum not exceeding the entire [illegible] on account of said road, divided into shares of [illegible] each; which shall be deemed personal property, and may be [illegible] and transferred in such manner and in such places as may be ordered and provided by the board of directors, who shall have power to require the payment of sums subscribed by stockholders, in such manner and on such terms as they may deem proper, and on refusal or neglect on the part of the stockholders, or any of them, to make payment, on the requisition of the board of directors, the shares of such delinquents may be sold or forfeited to the company upon such terms and conditions as may be provided for in the by-laws of said corporation. The board of directors hereby appointed shall cause books to be opened for subscriptions to said stock in such manner and at such times and places as they may direct.

Section 5. All the corporate powers of said company shall be vested in and be exercised by a board of directors, and such officers and agents as they shall appoint. The board of directors shall consist of not less than thirteen stockholders, four of whom shall be chosen every year by the stockholders; each share having one vote, to be given in person or proxy; each director successively elected to continue in office until his successor is elected and qualified. Any vacancy in the board may be filled by a vote of two-thirds of the directors remaining, such appointees to continue in office until the next regular election of directors; but no person shall be so elected who shall not have been openly nominated at a meeting of the directors at least one week before the time appointed for such
730 election. Other officers, agents, and servants, whether members of the board or otherwise, may be appointed, employed, paid, and dismissed, under such rules and regulations as the board of directors may from time to time adopt.

Section 6. The following named persons shall constitute the first board of directors, to wit: Henry K. Hardy, John R. Hampton, Edward Cross, H. P. Poindexter, Wm. E. Davidson, W. C. Bevens, B. C. Totten. John N. Mitchell, A. S. Huey, J. M. Curran, W. E. Ashley, D. J. Chapman, and Thomas J. Blackmore, for the time being, whose powers shall commence from and after the day this act shall be by them accepted, which shall not exceed ninety days from the the passage of this act, and shall be addressed to the Governor of the State of Arkansas, and filed in the office of the secretary of State.

Section 7. The president and directors for the time being are hereby authorized and empowered by themselves, their officers, or agents, to execute all the powers therein granted, for the purpose of surveying, locating, constructing, completing, altering, maintaining, preserving, and operating said road, and for the transportation upon the same of persons, goods, wares, and merchandise, with all such powers and authority of control and management of the affairs of said company as may be necessary and proper to carry into full and complete effect the meaning and intent of this act.

Section 8. The said company shall have power to make, ordain, and establish all such by-laws, rules, and regulations as may be deemed expedient and necessary to fulfill the purposes and carry into effect the provisions of this act, and for the well ordering, regulating, and securing the affairs, business, and interests of the company; provided that the same be not repugnant to the constitution and laws of the United States, of this State, or repugnant to this act, the board of directors shall have power to establish such rates of toll for the conveyance of persons and property upon the same, as they shall from time to time by their by-laws direct and determine, and levy and collect the same for the use of said company; the transportation of persons and property, the width of track, the construction of cars, locomotives, and all other equipments and appurtenances of the road, and all matters and things respecting the use of said road, and the conveyance of passengers and property, shall be in conformity to such rules and regulations as said board of directors shall from time to time determine.

Section 9. The said corporation may commence the construction of said road at any time after one hundred thousand dollars of the capital stock shall have been subscribed, and five per cent. thereon, paid to the board of directors.

731 Section 10. Said corporation shall have power to unite their road with the southern end of the Missouri road, at some suitable point on the line which divides these two States.

And its southern end with any road coming in from Texas at such point on the boundary-line which divides that State and Arkansas that may be deemed most eligible; and to make any contract or agreement with any other railroad company in reference to this business that may best insure the early construction of said road and its successful management, and also to make joint stock with any other railroad company in this or any other State, and to form one board of directors for the management of their affairs. If it should be found necessary to facilitate the early construction of their said road, the contract or agreement of the respective boards shall form a part of their respective charters whenever the same may be entered into and recorded with their charters.

Section 11. That the capital stock and dividends of said company shall be (forever) exempt from taxation, the road, fixtures, and appurtenances shall be exempt from taxation until after it pays an interest of not less than ten per cent. per annum.

Section 12. In case the persons incorporated by this act shall fail or neglect to accept the provisions of the same and comply with its conditions within the time and manner herein prescribed, then the same may be accepted by any other company which shall be approved by the Governor of this State, who, upon complying with the terms and conditions of this act, shall be vested with all the rights, powers, and immunities conferred upon the corporation herein named, and shall be subject to all the liabilities in said act, set forth in as full, ample, and complete a manner as if their names were inserted as corporators in this act.

Section 13. This act shall be deemed a public act, and shall be favorably construed for all the purposes therein expressed and declared in all courts and places whatsoever, and shall be in force from and after its passage: Provided, That all the [illegible] immunities, and franchises contained in the charter granted [illegible] session of the Legislature of this State to "Mississippi Valley Railroad Company," and not restricting or inconsistent with this act, are hereby extended to and shall form a part of this incorporation as fully as if the same was inserted herein.

Approved 12th January, 1853.

Plaintiff's counsel produces certified copy of the charter of the St. Louis and Iron Mountain Railroad Company, and offers the same in evidence.

732 Paper is marked by examiner Exhibit 27, and accompanies these depositions.

Defendant's counsel objects to the same, as irrelevant and incompetent.

Plaintiff's counsel produces certified copy of the articles of agreement and consolidation of the St. Louis and Iron Mountain Railroad Company and the Cairo & Fulton Railroad Company, under the name of the St. Louis, Iron Mountain & Southern Railway Company, filed May 16th, 1874.

The paper is marked by the examiner Exhibit No. 28, and accompanies these depositions, and the same is objected to by defendant's counsel, as incompetent and irrelevant.

Plaintiff's counsel produces before the examiner a book with the following title:

"A Digest of the Statute Laws of the State of Georgia, in force prior to the session of the General Assembly of 1851, with explanatory notes and references, and also with notes giving an exposition of the statutes by the supreme court of the State," &c., compiled and published under the authority of the General Assembly by Thomas R. R. Cobb, Athens, Ga., published by Christy Kelsea & Burk, 1851, and reads therefrom as evidence in this case, on page 542, as follows: "An act to point out the manner of creating certain corporations, to define their rights and privileges, and to provide a mode of changing the names of individuals, assented to December 28th, 1843. Pam. page 108.

Section 1. Be it enacted, That when the person interested shall desire to have any church, camp ground, academy, school, volunteer military company, manufacturing company, trading company, ice company, fire company, theatre company, or harbor, bridge, and ferry company incorporated, they shall petition in writing the superior or inferior court of the county where such associations may have been formed, or may desire to transact business, and for that purpose setting forth the object of their association, and the privileges they desire to exercise, together with the name and style by which they desire to be incorporated, and said court shall pass a rule or order directing said petition to be entered of record on the minutes of said court.

Section 2. When such rule or order is passed, and said petition is entered of record, the said companies or associations shall have

power, respectively, under and by the name designated in their petition to have and use a common seal, to contract and be contracted with, to sue and be sued, to answer and to be answered unto in any court of law or equity, and to appoint such officers as they
733 may deem necessary to make such rules and regulations as
they may think proper for their own government not contrary to the laws of this State, but shall make no contract of purchase, or hold any property of any kind, except such as may be absolutely necessary to carry into effect the object of their incorporation. Nothing herein contained shall be so construed as to confer banking or insurance privileges on any company or association herein incorporated, and any individual members of such manufacturing, trading, theatre, ice, and harbor companies shall be bound for the eventual payment of all contracts of such companies, as in cases of partnership.

SECTION 3. No company or association shall be incorporated under this act for a longer period than fourteen years, but the same may be renewed whenever necessary according to the provisions of the first section of this act.

SECTION 4. The said superior or inferior court shall have authority and power upon petition in writing to change the name of any individuals by rule or order for that purpose, provided such individuals shall have resided in the county where his or her application is made for at least one year previous thereto, and shall give at least seven months' prior notice in one of the nearest papers and at the court-house door of said county of the intended application.

SECTION 5. For entering any of said petitions and orders on the minutes of the court, and furnishing a certified copy thereof, the clerk shall be entitled to a fee of five dollars, except in case of applications by individuals for the change of name, in which case the clerk of said court shall be entitled to a fee of one dollar, and such certified copy shall be evidence of the matters therein stated in any court of law or equity in this State.

SECTION 6. All laws or parts of laws militating against this act be, and the same are hereby, repealed.

Defendant's counsel admits both of the foregoing to be acts of Georgia and Arkansas, but objects to them as irrelevant and incompetent.

Plaintiff's counsel offers in evidence a duly certified copy of the charter of the Southern Express Company by proceedings commenced in the superior court of Richmond county, Georgia, March 16th, 1875, and the same is by the examiner marked Exhibit 28½, and accompanies these depositions.

At this point, by consent, the further taking of testimony in this case was adjourned until to-morrow, 11 a. m.

ST. LOUIS, *January* 25, 1881.

Porties met pursuant to adjournment, and the further taking of testimony in this case was resumed as follows:

734 J. W. WALLACE, sworn and examined on the part of the plaintiff, testified as follows:

Direct examination by Mr. GLOVER:

Q. 1. What position do you occupy in respect to the St. Louis, Iron Mountain and Southern Railway Company?

A. Auditor.

Q. 2. How long have you been auditor of that railroad?

A. About fourteen years.

Q. 3. A statement of yours, under your signature, was offered to the examiner and filed yesterday, with reference to thousand-mile and fifteen-hundred-mile tickets, passenger tickets, issued by your road. Did that paper contain all the tickets that were issued within the dates named?

A. It contained all the tickets sold that were reported to my office.

Q. 4. Within the dates mentioned?

A. Yes, sir.

Q. 5. Can you give the names of the persons to whom they were sold? A. No, sir.

Q. 6. Is there no data in your office by which you could ascertain the names?

A. No, sir; none at all.

Q. 7. Are there data among the records or files of the St. Louis, Iron Mountain and Southern Railroad Company which disclose the names of the purchasers of these tickets?

A. I should think the Fourth street office—Mr. Ruggles should have the stubs and the names of the parties who purchased tickets at his office, and that those sold by what we term "ticket office A" could be had of our Fourth street agent.

Q. 8. Where do you think the names could be got?

A. From Mr. Ruggles and our ticket agent on Fourth St.

Mr. THOROUGHMAN (to Mr. Glover): I will have that made up for you by Mr. Ruggles.

Q. 9. With reference to the business transacted by the express department of the St. Louis & Iron Mountain Railroad Company, how are accounts kept?

A. Well, the express department have an auditor of their own,
but he is under my direction. All the vouchers are registered
735 in my office, and are paid by our treasurer. They have a
cashier; all the receipts of money are deposited with him,
which goes into the general fund.

Q. 10. Is there but one general account for the railroad company's express—both the freight account of the railroad and express freight account of the express department together?

A. Our business is divided into departments; we have what is called a passenger department, and sales of tickets are credited to that, and then of freight; we treat the express as a department, and it has a separate account of earnings and expenses.

Q. 11. Who could furnish that separate account of the business of the express department of your railroad company?

A. The gross is reported to me by the auditor of the express department. For the details you would have to call on him.

Q. 12. You have the general results?

A. Yes, sir; the gross monthly.

Q. 13. The particulars are not sent to you?

A. No, sir, except the expenditures; I have all the vouchers of the expenditures.

Q. 14. Who is the person who could furnish the particulars showing the transactions in particular of the express department of your railroad company?

A. M. M. Clark, auditor of the express department of the railroad company.

Q. 15. Then there is an auditor of the freight department?

A. No; we have a chief clerk in charge of freight accounts.

Q. 16. There is no auditor expressly of the common freight department? A. No, sir; he is styled chief clerk.

Q. 17. Who is the auditor of the passenger department?

A. We have a chief clerk for that.

Q. 18. Who is he? A. Mr. Naylor.

Q. 19. What is his given name? A. Fred. Naylor.

Q. 20. These chief clerks act as auditors?

A. Yes, sir; under my direction.

Q. 21. They are under your direction as general auditor of the whole affairs of the railroad company?

A. Of the accounts; yes, sir.

Signature waived.

736 C. W. AGEE, sworn and examined on the part of the plaintiff, testified as follows:

Direct examination by Mr. GLOVER:

Q. 1. Where do you reside?

A. My headquarters are at Little Rock, Ark.; I reside there.

Q. 2. How long have you resided at Little Rock?

A. Since the 12th of August, 1874.

Q. 3. What is your present business?

A. I am engaged in the express business.

Q. 4. How long have you been in the express business?

A. About ten years.

Q. 5. Have you had any experience in railroad business?

A. I was connected with railroad business about two years.

Q. 6. In what capacity are you now engaged?

A. I am route agent for the Southern Express Company, and in that capacity supervise the conduct of the business of the Southern Express Company over the St. Louis, Iron Mountain and Southern railway, and the Memphis and Little Rock railway, and other branches of the Iron Mountain railroad.

Q. 7. Will you tell me what is the express business?

A. The express business is a business of large detail, and consists in great part of forwarding by rapid means of conveyance freights and parcels, valuable packages, diamonds, jewelry, gold and silver, bank notes and other securities, and collecting either with or without goods and returning the proceeds, and of protesting paper, such as drafts, notes, and other paper requiring to be protested if not paid. An express agency also acts as agent of consignors and consignees in carrying goods, or bills of goods with the goods for collection, delivering part of a consignment if the whole is not taken, and returning the goods not sold, and the proceeds of the goods sold to the consignor.

Q. 8. What steps, if any, are taken in the express business to collect the matter which is the subject of express shipment; and what steps, if any, are taken to deliver?

A. We have wagons, drivers, and other employees who do the collecting of the matter from the doors or from the stores of the consignors at the point of shipment, and we take such matter to the office, where we weigh it, way-bill it, and take it thence
737 by wagon to the railway cars and put it in charge of messengers, and retain the custody of it until it arrives at destination, or the railway office nearest destination, and we take it thence from the railway cars to our offices for proper record, and we then deliver at the doors of the consignees at their place of residence, or places of business.

Q. 9. Do the express companies use any other method of transportation than railroad transportation?

A. Well, sir, we do not extend our business over lines of communication that are not rapid. We use the railroads generally; we sometimes use steamboats, and do a great deal of express business on steamboats; not particularly the Southern Express Company, but most of the regular companies do business in that section of the country where steamboats are run.

Q. 10. Is any part of the business which is done by an express company called accessorial; and, if so, what is accessorial service?

A. All that part of the business done apart from the mere transportation by the railroad company constitutes the accessorial service, just stated in my previous answer, in the main part.

Q. 11. What relation does this accessorial service, of which you have just spoken, bear to the transportation by railroad in respect of cost?

A. It has always been my experience that the accessorial service, on an average, costs the express companies more than the transportation of such matter costs the railway companies.

Q. 12. Now, will you state what you mean by that when you say "it has been my experience"? In other words, state the reason for what you have just said.

A. Well, take a ton of express matter, going an average distance, say, to Little Rock, 345 miles, and I think the railroad statistics and the evidence in this case show that it would cost about fifteen or twenty per cent. more than to carry it as common freight, and that would not be more than four dollars and fifteen cents or four dollars and twenty cents per ton to Little Rock, Arkansas; and I think it is very clear that the accessorial service cannot be done for the total sum of four dollars and fifteen cents for a ton of express matter.

Counsel for the defendant objects to the answer, on the ground that it is irrelevant and incompetent, and not responsive to 738 the question propounded, and moreover that it is incompetent to base any part of the answer on the evidence in this case.

Q. 13. Mr. Agee, what knowledge have you, if any, upon the subject of how many parcels in the ordinary and average course of things would constitute a ton of express matter collected by an express company, in a city like St. Louis or Little Rock, for shipment upon a railroad, taking the average course of business?

A. On an average, about seventy-five parcels would constitute a ton of express matter, or a ton of express matter would be composed of that many pieces. I think that it is a low estimate.

Q. 14. Have you been acquainted with the business of the Southern Express Company for the past several years touching the amount of space used by the Southern Express Company in its business with the St. Louis, Iron Mountain & Southern Railway Company in the car in which it has carried its express matter on the defendant's railroad?

Objected to, as irrelevant and incompetent.

A. Yes, sir; the Southern Express Company has for the past several years occupied about one-half of a car between St. Louis and Texarkana; and one-third of car between St. Louis and Columbus, Kentucky; and about one-third of a car between Cairo, Illinois, and Poplar Bluff, Missouri; and about one-quarter of a car between St. Louis and De Soto, Missouri.

Q. 15. Now, I put the same question in reference to the period of time covered since the commencement of this suit.

A. Well, sir, the Southern Express Company occupies half of a car, or that space allotted to it, between St. Louis and Texarkana, and has been since June first up to this time. We occupy jointly with the Iron Mountain express department one-third of a car between St. Louis and Columbus, Kentucky, on day trains; and we occupy the other space jointly with the express department of the Iron Mountain railroad, say, between Poplar Bluff, Missouri, and Cairo, where we occupied one-third of a car before. The Iron Mountain Express messenger is in the same car, and occupies with his matter the same space that was then wholly allotted to us, the Southern Express Company.

Q. 16. That is, the express department of the Iron Mountain railroad take one-half of the space you had before?

739 A. Yes, they are entitled to one-half, and use one-half; so that we do not occupy now, in fact, as much room as we did prior to the first day of June.

Q. 17. How long is that baggage car in which the Southern Express Company has been doing business since the commencement of this suit; how many feet long is it?

A. About thirty-six feet long, outside measurement.

Q. 18. How many feet high?

A. I should say about nine feet high, from the floor to the roof.

Q. 19. How broad?

A. I should say about eleven or twelve feet broad.

Q. 20. Now, do you know and can you give the dimensions, the length of a postal car on the St. Louis, Iron Mountain & Southern Company's road, used by the Government of the United States for the transportation of the mails?

A. Yes, sir; I measured one of those cars; the cars used exclusively by the Government, between St. Louis and Texarkana. They are fifty feet long, and about fifteen feet broad, and I should say eleven or twelve feet from the floor to the roof.

Q. 21. What did the Southern Express Company pay, if you know, for express service on the St. Louis, Iron Mountain & Southern railway prior to June first, 1880?

(Objected to, as incompetent, irrelevant, and leading.)

A. The Southern Express Company paid $195 per day for the use of the space allotted to it over the St. Louis, Iron Mountain & Southern road up to June first, 1880, an increased rate for an excess of freight which is set forth in the contract, the particulars of which I do not now remember.

Q. 22. What does said railroad company charge the Southern Express Company now, that is, since the commencement of this suit, since June first, 1880?

A. They charge us various rates to various points. Take Texarkana for illustration; they charge the Southern Express Company on a three-pound package from St. Louis to Texarkana, 35 cents each.

Q. 23. How much is that per ton?

A. That is about $233.10 for a ton from St. Louis to Texarkana.

740 Q. 24. How much is that per ton per mile?

A. That is a fraction over 47 cents per ton per mile.

Q. 25. Does that charge relate to ordinary packages?

A. Yes, sir; if packages are very valuable we put them in our safes.

Q. 26. How much would a five-pound package cost you in your safe from St. Louis to Texarkana according to the express department railroad rate?

A. The rates now assessed against the Southern Express Company from St. Louis to Texarkana, and required to be prepaid, are 75 cents, or 15 cents a pound.

Q. 27. How much is that a ton?

A. That is about $300 per ton.

Q. 28. How much per ton per mile?

A. That is about sixty cents per ton per mile.

Q. 29. Now, will you tell me how much it costs a railroad to transport a ton of freight per mile on a common freight train according to the reports of last year?

Objected to, as irrelevant and incompetent, no sufficient foundation having been laid to authorize the witness to speak on that subject;

also, that he has not shown that he knows anything about railroad transportation, or how much it costs.

A. Well, I do not recall the figures in the report of last year, but I have computed the average earnings per ton per mile for the five years ending 1879 by the St. Louis, Iron Mountain and Southern railway, and find that the average is one and ninety-nine one-hundredths of a cent per ton per mile, and the figures themselves show the excess.

Q. 30. Now, will you state whether that is a reasonable compensation for the railway company, sixty cents per ton per mile from here to Texarkana?

Objected to, as irrelevant, no foundation having been laid enabling the witness to speak on the subject.

A. Well, sir, I should say that I have had an acquaintance of nearly twelve years with express and railroad tariffs, and I have never heard of such a rate, and I think it is unparalleled; it certainly is in my knowledge unparalleled in the history of the transportation business, $15 per 100 pounds for 489 miles; there is no parallel case to it in my knowledge.

Q. 31. Still you do not state whether it is reasonable or unreasonable? A. I think it very exorbitant, sir.

741 Q. 32. What effect would the payment of such a rate have if continued permanently upon the business of the Southern Express Company over the St. Louis, Iron Mountain and Southern Railway Company's railroad?

A. It would compel the Southern Express Company to vacate the road and leave a monopoly of the express business to the railway company. We could not undertake to permanently pay such a rate, because it is nine times out of ten more than the express company's tariffs ever obtained on the matter on which this rate is assessed.

Q. 33. What do you know, if anything, in regard to new train or trains, and by a new train I mean one starting at a different time, put on the St. Louis, Iron Mountain & Southern railway since last May?

Objected to, as irrelevant and immaterial.

A. On or about the 7th of November, 1880, two new trains were put on, one leaving Texarkana and the other St. Louis at night, on a different schedule than those established theretofore, and they have continued to run over the road as night trains leaving St. Louis and Texarkana, and are now running.

Q. 34. What business has your company, the Southern Express Company, over that train or those trains, whatever they were, which had not been running before the 7th of November?

A. The Southern Express Company is excluded from the privilege of shipping any express matter whatever over those trains in charge of its messenger, and we do not, therefore, do any business on them.

Q. 35. What do you know of the exclusion of which you speak?

A. Well, sir, on the 10th day of December, [illegible], at Little Rock, Arkansas, the Southern Express Company had a quantity of express matter which had come from the East over the line of the Memphis & Little Rock railroad, and the connection having been missed that night with the regular South-bound train on the Iron Mountain railroad, I went to Mr. A. E. Buchanan, division superintendent, and chief representative of the Iron Mountain at Little Rock; I stated that this matter had been delayed, giving the cause, and asked permission to ship it on the train which would arrive there at one o'clock that evening; that was on the 10th of December, and 742 the train referred to was one of the new trains which had left St. Louis the night previous, and Mr. Buchanan refused me permission to ship the matter, saying the Southern Express Company could not ship any matter by the day trains; he called them day trains, as they arrived at Little Rock in the day time; and he refused me permission to forward the matter.

Q. 36. Do you know whether express matter for other persons was refused at the same time?

A. The Memphis & Little Rock Railroad Company has an express department of its own, and that matter had missed connection on the night mentioned; but the St. Louis, Iron Mountain & Southern railway received that matter and forwarded it over the new train, upon which our matter was excluded, and, therefore, put it 12 hours ahead of the Southern Express Company's matter.

Q. 37. What was the effect upon the business of the Southern Express Company to delay its express matter 12 hours?

A. Well, it was of great injury to the interest of our patrons and shippers, and by excluding the Southern Express Company from an equal footing with the Memphis and Little Rock express department, with which we competed for business out of Memphis, it worked a great injury, particularly in that case.

Q. 38. What would be the effect upon the patronage of an express company that should be kept twelve hours behind a competitor?

A. If they competed for freight to the same point of destination, I should think that it would clearly have the effect to give the express company which was twelve hours ahead the better part of the business and patronage of the line.

Q. 39. State any other thing with reference to the efforts of the Southern Express Company to ship over that new train; that is, do you know of any other facts in this connection, at Little Rock, for instance, or any other place?

A. I know of discriminations at Little Rock, not in connection particularly with that train.

Q. 40. You may state any thing you know about facilities or conveniences either granted or denied to the Southern Express Company.

A. There are two express warerooms on the platform of the 743 St. Louis, Iron Mountain and Southern railway property at Little Rock, Ark., and those two rooms have been used, or had been used, for a number of years by the Southern Express

Company to store all through matter when connections were missed with the South-bound trains on the Iron Mountain railway, and used as well to store all matter arriving on the night trains for Little Rock proper. The depot there is over a mile from the town, and the Southern Express Company has been excluded from the use of those rooms, and the Memphis and Little Rock Company's express department is permitted to use them; and the Southern Express Company, therefore, is obliged to send its wagon, driver, and transfer clerk more than a mile at night, at a very unseasonable hour, between one, two, and three o'clock in the morning, to haul this matter away from the depot immediately on arrival. We have no place to store it whatever, and we have to carry it about a mile and a quarter over a very rough road.

Q. 41. What shelter is there short of the mile and a quarter?

A. We have no shelter there at all for our matter. We are excluded from the use of those rooms, and from the storage room.

Q. 42. Why?

A. Well, sir, I should say it was on account of malice and prejudice; I don't know of any other reason that could exist for it, because there is ample room there to store the entire volume of express matter necessary to be stored therein.

Q. 43. How long has that been going on?

A. Since some time in July, 1880.

Q. 44. If your wagons go down and await the incoming of the train, and it rains upon you or snows upon you, what facilities are there for the protection of your agents and your goods?

A. Well, sir, we have simply a shed there, no house, in which our people stand. We protect our goods from the falling weather, but not our people. It is very hard to stand the very cold weather that we have to put up with there, because there are no fires or any place to go into.

Q. 45. Have you any knowledge, obtained from the course of business between the Southern Express Company and the St. Louis, Iron Mountain & Southern Railway Company, since last May or June, in reference to a six times charge; and, if so, tell what that is?

744 A. Well, sir, the St. Louis, Iron Mountain & Southern Railway Company charge the Southern Express Company six times merchandise rates on its safes between St. Louis and Texarkana, or $15 a hundred between St. Louis and Texarkana, and six times merchandise rates between St. Louis and Columbus; and six times merchandise rates between Cairo and Poplar Bluff, Missouri.

Q. 46. When did that begin?

A. On the 12th of November, 1880, Mr. James Aikin, superintendent of the express department of the St. Louis, Iron Mountain & Southern Railway Company, enclosed to me a circular giving this rate. It was a circular that had been distributed to his agents, as the face of it shows.

Q. 47. Do you know on what that charge is based?

A. Well, it is based on the weight of the articles carried, and done, I infer, with the intention of getting at the value.

Defendant's counsel objects to any inference, and asks the examiner to strike out the answer.

Q. 48. They do charge you six times merchandise rates on some articles?

Objected to, as leading.

A. They charge six times the merchandise rates on safes.

Q. 49. Now, tell us what you know of a three times charge, if you know anything?

A. They charge three times merchandise rate per 100 pounds on all boxes and sacks containing packages or bulked matter.

Q. 50. When did that charge begin?

A. On the 12th of November, 1880.

Q. 51. Now, do you know what was said at the time of a shipment just preceding the demand of the Iron Mountain and Southern railway from you of a six times charge?

A. They simply issued this rate, and as it gives to the Iron Mountain railroad a greater revenue than if they charged us on the contents of the safes themselves, they do not ask for any value. They assess that rate, and we are obliged to pay it or have our safes left; and as it obtains for the railroad company a greater revenue than if they took a list and charged for each and every parcel in the safe, they do not make any demand in respect to the contents.

745 Q. 52. When a three times rate is charged, state what is said of and concerning it, if anything, or whether the charge is made because it is a box, bundle, or sack.

A. They charge three times merchandise rate on boxes in which they suppose packages of bulked matter are contained. The agent at Texarkana, with whom I had a conversation concerning the matter—Mr. F. W. Brown—said to me that he was instructed to charge that rate on anything, any box or package, that he suspected, or had good reason for suspecting, contained bulked matter. He could not possibly know it, because he did not see the contents of the box, and was not allowed to open it.

Q. 53. Do you recollect the date of the order of Judge Treat, modifying the injunction order originally granted in this case? A. It was November 6th, 1880.

Q. 54. Now, previous to that time, was the railroad company transporting for your company any safe containing currency or boxes containing packages?

A. They were daily transporting safes containing currency and boxes containing packages, when they did not throw them off; they sometimes throw them off.

Q. 55. Were they charging three times or six times rate?

A. They were charging regular merchandise rates per hundred pounds; one rate.

Q. 56. The three time and six time rate had not begun?

A. No, sir; that was inaugurated and assessed against us on and clothing and other necessaries of the young man who had shipped it, and the box was again presented for several subsequent mornings and refused, on the alleged ground that the box might not then contain at the time it was offered what it did contain when opened and the contents exposed. I returned to Texarkana and personally attempted to ship the box on the 11th and 12th days of October, refusing again to open the box, and as I found I could not ship it over the Iron Mountain road I forwarded it over the Texas & Pacific and M., K. & T. railways, and on to destination.

Q. 72. Will you tell me the earliest notice you had, and from whom, of the purpose of the St. Louis, Iron Mountain & Southern Railway to exclude the Southern Express Company from its line?

A. I first learned it from Mr. A. W. Soper, general superintendent of the St. Louis, Iron Mountain and Southern railway, on or about the 28th or 29th of March, 1880.

Q. 73. Had you any conversation with Mr. Soper at that time upon the subject?

A. Yes, I had some conversation with him.

Q. 74. State what it was.

A. He was at that time general superintendent of the St. Louis, Iron Mountain and Southern railway, and I asked him why it was that the Southern Express Compahy had been ordered to vacate the Iron Mountain railroad. He answered that there was no fault to be found with the Southern Express Company, on the contrary, that he regretted the severance of our business relations, but that "our *our* people," as he expressed it, had concluded that there was big money or a great deal of money, I forgot the exact words, in the express business, and they wanted to make it.

Answer objected to, as irrelevant and incompetent.

749 Q. 75. What did he say in the same conversation, if anything, in reference to who were "our people" whom he mentioned?

A. I asked him who the intended successors of the Southern Express Company were, and he named the Mississippi Valley Express Company as an organization which was then being organized, and named some of the stockholders—Mr. Marquand, Mr. Kerens, and Mr. Allen, and some other shareholders or stockholders in the Mississippi Valley Express Company, whose names I do not now recall.

Q. 76. Did you have any other conversation, at that time or soon after, upon the same subject?

A. About the fifteenth of April, 1880, a few weeks after that, I had another interview with Mr. Soper concerning the matter.

Q. 77. State what he said.

A. When he had ascertained that the Southern Express Company did not intend to vacate the road, he said that the Iron Mountain railroad would determine what express company would do an express business on the road, court or no court, though all hell should oppose it. He said that in the presence of Mr. R. C. Kerens and Mr. Fisher, superintendent of the Southern Express Company.

Q. 78. Now, will you relate any transaction which took place at the Union Depot, in this city, in June last, about the business of the Southern Express Company with the defendant railroad company?

A. On the morning of the 2nd of June, 1880, I was at the Union Depot, and went into the express car, which was then jointly occupied by the messenger of the Southern Express Company and the messenger of the St. Louis, Iron Mountain and Southern railway express department, and Mr. R. C. Kerens, the general manager of the express department, came into the car, and asked to know where the messenger of the Southern Express Company was. Mr. C. D. Parham was the messenger in charge of the Southern Express matter, and answered Mr. Kerens that he had charge of the matter belonging to the Southern Express Company. Mr. Kerens instructed Mr. Parham that the messenger of the Iron Mountain Railway Company had charge of all express matter in the car, and 750 that it was Mr. Parham's duty to deliver to the railroad company's messenger all the matter in the car; and also instructed the messenger of the railroad company that he should take charge of it, and deliver it to the agents of the Iron Mountain railroad, and collect the charges thereon. I then offered to prepay to Mr. R. C. Kerens the tariff rates on all the matter the Southern Express Company had in the car, but he refused, insisting that the railway company's messenger should take charge of all matter, and he left the depot with this instruction—that is, to seize the Southern Express Company's matter.

Q. 79. Did he get it?

A. No; I instructed the messenger to retain the custody of all freights in his charge, and deliver them to agents of the Southern Express Company.

Q. 80. What was done with the express matter of the Southern Express Company?

A. The messenger of the Southern Express Company retained the custody of it, and delivered it at the point of destination along the line, as had been his custom prior to that time.

Q. 81. Do you know whether the Southern Express Company has paid anything to the St. Louis, Iron Mountain & Southern railway since last May or June, for fares for its messengers?

A. Yes, sir: the Southern Express Company has paid between $14,500 and $15,000 fares for its messengers since the first day of June, 1880; not less than $14,500.

Q. 82. What has been the method of procuring fares—what sort of tickets?

A. We have purchased both 1500 and 1000-mile tickets; 1500-mile tickets to be used in Arkansas, and 1000-mile tickets to be used in Missouri.

Q. 83. Since what time?

A. Since the first day of June, 1880, up to the present time.

Q. 84. How many 1500-mile tickets has the Southern Express Company purchased since that time, for the use of its messengers, from the St. Louis, Iron Mountain & Southern Railway Company?

A. Between 95 and 100 for the messengers exclusively. I do not include those that I have bought for my use in traveling on the business of the company. I bought some six or eight myself, and I do not include those in the estimate.

751 285. You bought six or eight what?

A. 1500-mile tickets.

Q. 86. What has the Southern Express Company paid for those tickets? A. $52.50 each, sir, without exception, for the 1500-mile tickets.

Q. 87. Have you bought any fifteen hundred-mile tickets under $52.50? A. No, sir.

Q. 88. Well, sir, how many one thousand, if any, has the Southern Express Company purchased for its messengers since June first, 1880? I mean from the St. Louis, Iron Mountain & Southern railway?

A. We have purchased about 280 one thousand-mile tickets for the use of the messengers of the Southern Express Company.

Q. 89. How much have you paid?

A. Thirty dollars each.

Q. 90. Do you know of any bought under that amount?

A. No, sir.

Q. 91. What is the regular fare for those 1500-mile tickets?

A. The regular, full fare, I suppose.

Q. 92. What do they charge you?

A. They charge us $30 each for the 1000-mile tickets, and $52.50 for the 1500-mile tickets.

Q. 93. What do you know, if anything, with reference to the business done by the Southern Express Company over the Missouri, Kansas, and Texas railway?

Objected to.

A. The Southern Express Company don't do any business over the Missouri, Kansas, and Texas railway.

Q. 94. Has it ever done any?

A. No, sir; we have no outlet or line over that road at all.

Q. 95. Did they ever do any business over the Missouri, Kansas, and Texas?

A. No, sir; none whatever.

Q. 96. In the course of your connection with the business of the Southern Express Company, and with the business of the defendant railroad company, have you any knowledge of the increase of tariff rates; I don't speak now of the six time charge, or the three time charge, but the increase of the tariff rates of the railroad since the 6th of November, the date of the modifying order of Judge Treat?

752 A. Yes; I have a memorandum detailing a great many points to which the tariff of the St. Louis, Iron Mountain and Southern Railway Company has been increased against the Southern Express Company since the 6th day of November.

Plaintiff's counsel produces and shows to the witness a paper marked Exhibit No. 29, with this caption, "St. Louis, Iron Mountain and Southern Railway Company, and Memphis and Little Rock Railroad Company, express department, money and freight tariff from St. Louis," etc., and bearing date July 31, 1880, and hands the same to the witness. Plaintiff's counsel also produces and shows to the witness a paper marked Exhibit No. 30, with this caption, "St. Louis, Iron Mountain and Southern Railway Company, and Memphis and Little Rock Railroad Company, express department, money and freight tariff from St. Louis. Mo.," etc., dated St. Louis, December 15th, 1880, and hands it to the witness, and asks the witness to point out any increased rate which he discovers in Exhibit 30, over the rate defined by Exhibit 29.

A. The paper marked Exhibit 29 is the tariff of the St. Louis Iron Mountain and Southern railway assessed against the Southern Express Company on the 6th of November, and prior thereto, and the paper marked Exhibit 30 is the tariff of the same railroad company assessed against and charged the Southern Express Company from and after the 15th of December, 1880, up to the present time, and is the tariff now being charged. The increased rates shown by this are: The St. Louis, Iron Mountain and Southern railway charged the Southern Express Company on the 6th of November, and prior thereto, sixty cents a hundred pounds on certain articles, beer, ice, &c., from St. Louis to Allenville, Mo.; they now charge seventy-five cents per one hundred pounds. They charged on the 6th of November, and prior thereto, fifty cents a hundred pounds to Arcadia; they now charge sixty-five cents per hundred, and have since December 15th, 1880. On the 6th of November, and prior thereto, they charged forty cents per hundred pounds to Bismarck, Mo., and they now charge, and have since the 15th of December, fifty cents per hundred pounds. They charged thirty-five cents a hundred pounds to Blackwell, Missouri; they now charge forty cents per one hundred pounds. They charged twenty-five cents per one hun-
753 dred pounds to Bushburg, Mo., on and before November 6th,
1880; and they now charge thirty cents per hundred pounds. On and before November 6th, 1880, they charged sixty-five cents per hundred pounds to Charleston, Mo., and they now charge seventy-five cents per one hundred pounds. On and before November 6th, 1880, to Columbus, Kentucky, the charge was sixty-five cents per one hundred pounds; from and after December 15th, and to this day, they charge seventy-five cents per one hundred pounds. To Delassus, Mo., on and before November 6th, 1880, they charged fifty cents per one hundred pounds; from December 15th to this day they charge sixty-five cents per one hundred pounds. To De Soto, Mo., on and before November 6th, 1880, they charged thirty cents per one hundred pounds; from and after December 15th, and to this day, they charge thirty-five cents per one hundred pounds. To Fredericktown, Mo., on and before November 6th, 1880, they charged fifty cents per one hundred pounds; from December 15th, 1880, to this day they charged seventy-five cents a hundred pounds. To Irondale, Mo., on and before November 6th, 1880, they charged forty-five cents per one hundred; they now charge fifty cents per one

hundred pounds. To Kimswick, Mo., on and before November 6th, 1880, they charged twenty-five cents per one hundred pounds; they now charge thirty cents. To Lutesville, Mo., on and before November 6th, 1880, they charged sixty cents per one hundred pounds; they now charge seventy-five cents per one hundred pounds. To Mill Spring, Mo., they charged sixty-five cents per one hundred pounds on and before November 6th, 1880; they now charge seventy-five cents per one hundred pounds. To Mineral Point, Mo., on and before November 6th, 1880, they charged forty-five cents per one hundred pounds; they now charge fifty cents per one hundred pounds. To Morley, Mo., on and before November 6th, 1880, they charged sixty-five cents per one hundred pounds; they now charge seventy-five cents per hundred. To Newport, Ark., on and before November 6th, 1880, they charged eighty-five cents per one hundred pounds; they now charge one dollar per one hundred pounds. To Okeane, Ark., on and before November 6th, 1880, they charged eighty cents per one hundred pounds; they now charge one dollar
per one hundred pounds. Peach Orchard, Ark., on and before
754 November 6th, 1880, they charged sixty-five cents per one
hundred pounds; they now charge seventy-five cents per one hundred pounds. To Sulphur Springs, Mo., on and before November 6th, 1880, they charged twenty-five cents per one hundredpounds; they now charge thirty cents per hundred. To Walnut Ridge, Ark., on and before November 6th, 1880, they charged eighty cents per one hundred pounds; they now charge one dollar.

At this point, by consent, the further examination of witnesses in this case was adjourned until to-morrow, January 26, at 11 o'clock a. m.

St. Louis, *January* 26, 1881.

Parties met pursuant to adjournment, and the examination of G. W. Agee was resumed, as follows:

Q. 98. Does the Southern Express Company ship any money over the St. Louis, Iron Mountain & Southern road; and, if so, at what price?

A. We ship a good deal of Government money over the Iron Mountain; our charge is fifty cents per thousand on United States Treasury notes, currency, &c.; sometimes it goes over the road in sealed safes.

Q. 99. What is the express department of the St. Louis & Iron Mountain charging for transporting ten thousand dollars of Government money if it were in a sealed safe, and nothing else in it?

A. It would cost us from St. Louis to Texarkana fifteen dollars if it weighed 100 pounds, and if it weighed as much as 150 pounds it would cost the Southern Express Company $22.50, according to the tariff now being assessed against us by the St. Louis, Iron Mountain & Southern railroad.

Q. 100. For how long?

A. Since the 12th day of November, 1880.

Q. 101. What would you receive, according to your tariff rates and practice, for transporting ten thousand dollars over the St. Louis, Iron Mountain & Southern railroad?

A. The entire revenue would be five dollars accruing to the Southern Express Company for the transportation.

Q. 102. For which, according to the present rate charged by the express department of the road, you would pay how much? A. We would pay fifteen dollars or twenty-two and a half, according to the weight of the safe.

755 Q. 103. State to what extent the St. Louis, Iron Mountain & Southern does furnish express facilities to the public.

A. I see that the latest tariff issued by the Iron Mountain express department, under date of December 15, 1880, over the printed signature of James Aikin, superintendent, that the Iron Mountain Railroad express department instructs its employees not to receive paper for protest. This I consider a very important element in the express business, and one which, if withdrawn from the public, would be a very serious detriment to the commercial interests of the country.

Q. 104. What does the Southern Express Company do, if anything, in regard to such a matter?

A. The Southern Express Company protests notes, drafts, paper, and other like paper requiring protest, if not paid.

Q. 105. Do you know whether the express department of the St. Louis, Iron Mountain & Southern railroad ships beyond its lines? A. No, sir; it has no express facilities beyond the termini of the Iron Mountain railroad, I believe.

Q. 166. At Texarkana? A. At Texarkana or Columbus, Kentucky; Cairo, Ills.; or Little Rock, Arkansas, or at St. Louis, or any point diverging from here.

Q. 107. Do you know whether the messengers of the express department of the St. Louis, Iron Mountain & Southern go on the business of the express department beyond the termini of said railroad lines? A. They do not, I believe, sir.

Q. 108. When freight is brought to the Southern Express for shipment, in what condition is it when it first arrives?

A. It is generally in shipping condition, either sealed with wax or tied up with strings and twine, and in such condition as to be shipped; those that are tied with string and not sealed with wax are virtually sealed to us.

Q. 109. In the course of business, does the Southern Express Company open sealed packages, or packages otherwise closed? A. No, sir; it does not.

Q. 110. What proportion of the goods received and shipped by the Southern Express Company is received in sealed or closed packages?

A. I should say nine-tenths of them, because I do not believe that more than one-tenth, and that, I think, is a full estimate, are sealed by our employees themselves.

756 Q. 111. How many years have you been in the express business? A. About ten years, sir.

Q. 112. What time did you first know of the claim by any railroad carrier to open the express matter delivered to them by the express company for transportation?

A. I never knew of my own knowledge any occurrence of that kind, save on the part of the Iron Mountain railroad.

Q. 113. What is the course of business on the part of the Southern Express Company as to sealed packages, when they are brought to the office of the Southern Express Company?

Objected to, as irrelevant and incompetent.

A. When sealed, we ship them forward in the same condition, and do not open them or allow them to be opened; we simply ask the shipper to declare the value—ask what is the value of the package, for instance—and if he says no value, we use a stamp generally, and say, "value ask- and not given;" if he says, Value ten dollars, we insert it in the receipt; if he declines to declare the value, we stamp the receipt, "value asked and not given," and charge accordingly.

Q. 114. Has the Southern Express Company ever made a claim to open a package?

Objected to, as incompetent.

A. I could state, in answer to that question, the practice that maintained in Memphis, December, 1872; I was then clerk in the office of the Southern Express Company at Memphis, and I called the attention of Mr. Hamilton, agent at that point, to the fact that Byrd & Co., Clark, and other jewelers in Memphis, were getting packages from New York city which had no value declared on them, either on the way-bill or package, and that the tariff did not assess any revenue for value, and as they were dealing in jewelry exclusively, it was natural to infer the packages contained large amounts of value; but I was instructed by the agent we could not assess any value on them unless they had been so declared at the shipping point, and the packages were allowed to pass as ordinary packages; that was the custom then, and I have never known any change since.

Defendant objects, as irrelevant and incompetent.

Q. 115. In the course of the business of the Southern Express
Company, does it ship beyond Texarkana over the Iron
757 Mountain railroad? A. It transfers to the Texas Express
Company, at that point, sir, a great deal of matter.

Q. 116. Will you state what amount of freights is charged by the St. Louis, Iron Mountain & Southern railroad to Texarkana, from St. Louis, on matter destined beyond Texarkana, through the Southern Express Company?

A. The Southern Express Company is charged full, regular tariff to Texarkana; I know that because no difference is made as to whether the package is local in stopping at Texarkana, or whether it is through and going beyond Texarkana.

Q. 117. To illustrate, suppose the Southern Express Company receive a fifteen-pound package at St. Louis to be sent to Galveston, Texas, through the Southern Express Company, over the Iron Mountain Railroad; what would be the charge to the Southern Express Company of the Iron Mountain railroad express department from St. Louis to Texarkana?

A. I can answer that by looking at the tariff; I find it is sixty-five cents.

Q. 118. No reduction would be made then to the Southern Express Company on the full tariff rate, because the freight was going beyond Texarkana? A. No, sir; none at all.

Cross-examination by Col. **Broadhead**:

Cr.-Q. 1. How long did you say you had been in the express business? A. About ten years.

Cr.-Q. 2. All the time in the employment of the Southern Express Company?

A. No, sir; I was about two years engaged in the Harmon's Virginia Express and the express department of the Atlantic, Mississippi & Ohio railroad in Virginia.

Cr.-Q. 3. How long have you been in the employment of the Southern Express Company?

A. Since December 2d, 1872.

Cr.-Q. 4. When did you engage in the railroad business?

A. In the year 1870 and 1871.

Cr.-Q. 5. In what capacity?

A. I was part of the time ticket agent, and another time engaged in the freight department and loading and unloading cars.

Cr.-Q. 6. How long?

A. I suppose I was connected with the railroad company proper about two years.

758 Cr.-Q. 7. How long in the freight department?

A. Well, sir, I cannot tell with any degree of certainty, but I should think about two-thirds of the time probably.

Cr.-Q. 8. What particular branch of the freight department?

A. Well, sir, I had the local freight agency at Norfolk, Virginia.

Cr.-Q. 9. What were your duties as freight agent?

A. I loaded and unloaded cars and billed freights and assessed tariffs on them.

Cr.-Q. 10. You fixed the tariff on them?

A. No, sir; I assessed the tariff according to those given—I made the rates according to the tariffs given me.

Cr.-Q. 11. You loaded and unloaded cars?

A. I loaded and unloaded cars.

Cr.-Q. 12. Do you mean to say you made up the way-bills for the loaded cars? A. Yes, sir.

Cr.-Q. 13. Where did you get the tariff from?

A. It was furnished me by the officers of the road.

Cr.-Q. 14. You were engaged in that particular department of the freight business how long?

A. I suppose about a year and a half, as an estimate at this date, without reference to the particular dates.

Cr.-Q. 15. You never had anything more to do with railroads than that; you were never conductor on a train?

A. No, sir; I never was a conductor on a train.

Cr.-Q. 16. You know nothing about the general management of the railroad business?

A. Well, sir, I can't say I do not; I have been traveling almost incessantly over local and through freight trains and passenger trains a little more than six years on the Iron Mountain.

Cr.-Q. 17. Did the line of your business call you to know anything about cost of running a train?

A. Well, sir, it does not call for any particular attention on my part as to the cost of running a train.

Q. 18. I wish to know whether your business necessarily calls you to know anything specially about the cost of running a train?

A. My business would necessarily and has necessarily called for a daily contact with railroad business, but what ideas I might have on that subject would be merely a matter of observation.

759 Q. 19. Of course you do not pretend you know anything about the cost of repairing the railroad track, engine, and cars, or anything of the sort or cost of construction, or anything of the kind?

A. No, sir; I have not given any opinion of that sort.

Q. 20. The cost of fuel, the payment of agents and employees of railroads, and all that?

A. I know something about the cost of agencies.

Cr.-Q. 21. Well, do you profess to be an expert in the express business? A. I know something of the express business.

Cr.-Q. 22. Engaged in it, you say, six or eight years?

A. Engaged in it about ten years, I think, sir.

Cr.-Q. 23. Where does your duty call you to go on the line of the Southern Express Company?

A. I have immediate charge of all the agencies along the line of the Memphis & Little Rock railway and the St. Louis, Iron Mountain & Southern railway and its branches; having charge of such agencies as well as of messengers on the trains, I travel almost constantly.

Cr.-Q. 24. You go over all the line of railroad in the discharge of your duties as agent of the company?

A. Over the entire line of the St. Louis, Iron Mountain & Southern and the Memphis & Little Rock railway and the Hot Springs railroad.

Cr.-Q. 25. That is all; you deliver packages I suppose at all the railroad stations along those lines of railway for the Southern Express Company itself?

A. Not all of them; we have some agencies; we do not deliver at all stations of the Iron Mountain Railway Company.

Cr.-Q. 26. All that the public requires you to?

A. No, sir; in some cases we might deliver, but we have no agencies.

Cr.-Q. 27. The business has not been sufficient to justify the employment of an agent?

A. No, sir; occasioned more particularly by the [illegible]
issued by Mr. Soper, superintendent of the Iron [illegible]
Southern, forbidding any agent of the Iron Mountain [illegible]
act as agent of the Southern Express Company along the [illegible]
Iron Mountain; and at a great many stations on the [illegible]
760 Mountain, there no other competent persons to take charge
of the express business than the railroad agent, and for that
reason we have been obliged to discontinue some of [illegible]

Cr.-Q. 28. You do not make particular complaint of Mr. Soper on that account do you?

A. I simply answered your question, sir, I did not intend to allege it as a complaint against Mr. Soper.

Cr.-Q. 29. I suppose you could employ competent men if you paid enough at those stations?

A. No, sir; I have, I think, offered in several cases more than sufficient pay to agents and they have declined.

Cr.-Q. 30. At how many points on the line of roads you travel is this accessorial service you speak of performed?

A. The accessorial service in part—in some measure or form is performed at every station on the line of the road where we have an agent.

Cr.-Q. 31. Do you mean to say you keep wagons, drivers, horses, &c., at every station? A. I do not.

Cr.-Q. 32. What do you mean by saying the accessorial service is performed at each particular station?

A. I mean that we have an agent, and that he receives packages for the public, delivers them at the cars of the railway, to the messengers of the Southern Express Company on the train, other agents receive them from the messenger on the train and deliver them either at the store or residence of the consignee.

Cr.-Q. 33. That is substantially the same service as performed by the railroad in regard to freight at all the railroad stations? A. Yes, substantially the same.

Cr.-Q. 34. Did you put that under your definition of accessorial service, as explained by you in your examination-in-chief? A. I include it as part, yes.

Cr.-Q. 35. But when I asked the question I wished to know at what station on the lines of the railroads you speak of have you employed drivers, wagons, horses, and special agents to look up articles for transportation.

A. I did not understand that you wanted to know at what stations we had wagons particularly; we have agents at all the stations to collect those parcels; we have wagons at only a few of them.

Cr.-Q. 36. Well, which?
761 A. De Soto, Fredericktown, Piedmont, Little Rock, Charlestown, Mo., and Texarkana, Ark.; I believe those are all I recall now, sir.

Cr.-Q. 37. How many agents have you employed here in St. Louis for the collection of express matter for the Southern Express Company?

A. Well, sir, we employ all the agencies of the Adams, such as wagons, horses, drivers, &c.

Cr.-Q. 38. Those of the Adams Express Company, those are your agents? A. Yes, sir.

Cr.-Q. 39. How many of them are there in St. Louis?

A. I cannot tell, I think somewhere between 17 and 20 wagons, as to drivers, clerks, &c., they are very numerous; I would not undertake to give the definite number.

Cr.-Q. 40. Are those agents you speak of for the collection of freights? A. Yes, they collect all kinds of express matter.

Cr.-Q. 41. They do the business for your company and for the Adams Express Company? A. Yes, jointly.

Cr.-Q. 42. Who are the wagons and horses owned by?

A. I cannot undertake to say, sir; I might simply give an opinion, but I do not know who they are owned by. I believe they belong to the Adams Express Company; that is the current rumor among our people.

Cr.-Q. 43. Do you ever deliver express matter at points where you have no local agents?

A. We do not do so unless specially instructed by the consignor to put off some articles of little, very little, value, which is in haste to go to some point, or probably he has some party to meet it; that is a very rare case.

Cr.-Q. 44. If a man in St. Louis wants to send an article by express to any point on the Iron Mountain railroad between St. Louis and Texarkana, where you have no local agent to receive it, do you send the article when he brings it?

A. Well, there have been some articles taken for points where we have no agent, taken to the nearest station; I do not believe that is the practice.

Cr.-Q. 45. But it is done?

A. I expect it has been; I am not in charge of things here and I do not know how often; I think it has been done.

Cr.-Q. 46. That is done by the messenger on the car?

762 A. Done by the agency at St. Louis, I suppose.

Cr.-Q. 47. But who delivers it at the railroad stations; doesn't your messenger on the car deliver it at the railroad stations?

A. The practice is to take it to the station at which we have an office nearest to the destination; I stated just now in case we receive special instructions to do so we make a receipt read "put off at the owner's risk," and sometimes deliver at a point where we have no agency; but only when specially instructed to do so.

Cr.-Q. 48. But you give receipts for all articles sent by express? A. That is the custom and practice.

Cr.-Q. 49. What did you mean by saying in your examination-in-chief—your way-billing articles?

A. We enter them on bills showing the weight, address, destination, rate, &c.

Cr.-Q. 50. What is done with that bill?

A. It is sent to the office; the terminal office of the route.

Cr.-Q. 51. Do your messengers [illegible] points where you have no agents?

A. They sometimes do, sir.

Cr.-Q. 52. Brought to the car and delivered to the [illegible] Yes.

Cr.-Q. 53. And he gives a receipt for them?

A. It is not the practice unless the consignee [illegible] receipt; we do not generally give receipts for such [illegible]

Cr.-Q. 54. You do not generally give a receipt for [illegible] A. Generally do not, sir.

Cr.-Q. 55. Are they entered on the way-bill? A. Yes, sir.

Cr.-Q. 56. Who entered them on the way-bill?

A. The messenger makes the way-bill.

Cr.-Q. 57. Have you an agent at Carondelet? A. No, sir.

Cr.-Q. 58. Do you receive express matter at Carondelet?

A. Not to my knowledge now, unless some one were to come there and offer us certain articles for shipment.

Cr.-Q. 59. Haven't you a rate from Carondelet through to [illegible]kana?

A. We have a rate proportioned to distance, but no rates at all [illegible] Carondelet.

Cr.-Q. 60. If a man at Carondelet wanted to send express

763 matter to Little Rock, would he have to bring it to St. Louis?

A. No, sir.

Cr.-Q. 61. What then?

A. Give it to the messenger on the train.

Cr.-Q. 62. Well, you do a good deal of business of that kind [illegible] Carondelet, do you not?

A. I think not; my understanding is we do none.

Cr.-Q. 63. Whose business is it to know whether it is done [illegible]

A. Mine.

Cr.-Q. 64. As route agent?

A. Yes; but I don't believe we do any business there as a practice; we may get a package or a parcel occasionally.

Cr.-Q. 65. Is the messenger authorized to receive the charges for transportation of articles when he receives them in that way, the messenger himself, does he receive the pay?

A. If offered, yes; if the shipper desires to prepay it.

Cr.-Q. 66. He collects if not prepaid at the point of delivery? A. He delivers the matter to the agent at the point of destination, and he makes the collection.

Cr.-Q. 67. You have an agent at De Soto?

A. Ye, sir, we have.

Cr.-Q. 68. Have you any agent at Jacksonville, Ark.?

A. No, sir, no agency there now.

Cr.-Q. 69. You did have an agency there? A. Yes, sir.

Cr.-Q. 70. How far this side of Little Rock is that?

A. I think about 17 miles, sir.

Cr.-Q. 71. You deliver articles there, I suppose?

A. We sometimes do when specially instructed, as in the case before recited.

Cr.-Q. 72. At most all those points along the line of railroad where you have an agent you have simply one man to receive goods and deliver them to persons to whom directed; you have no wagons, horses, or drivers employed, except at two or three points, Little Rock, St. Louis, Texarkana, and Memphis?

A. Yes, Fredericktown, Piedmont, Charlestown, and De Soto.

Cr.-Q. 73. Do you keep teams at those points?

A. We hire times there, sir.

Cr.-Q. 74. Do you make any difference for charges for carrying packages between St. Louis and Little Rock, if it is delivered
764 by the owner or shipper, at the office in St. Louis, himself, and when it is brought by one of the wagons of the Adams Express Company? A. No, sir.

Cr.-Q. 75. You make no difference?

A. No, sir, because such exceptions are rare.

Cr.-Q. 76. You say they are rare? A. I think so, sir.

Cr.-Q. 77. Isn't it common for persons having valuable small packages to send to deliver them in person to the agent?

A. Yes, sir, such as money, particularly.

Cr.-Q. 78. That is most generally the case in regard to many valuable packages, is it not?

A. In regard to many of those packages of extraordinary value, of course the owner is very careful about them; but I think the practice is to deliver them at the office as often as it is for us to call for them.

Cr.-Q. 79. If an article is received, say at Carondelet for Jacksonville, what rate is charged on that?

A. I cannot tell exactly without having the tariff before me.

Cr.-Q. 80. Isn't it the same rate that is charged between St. Louis and Little Rock? A. Just about, sir.

Cr.-Q. 81. Isn't it exactly the same?

A. Yes, sir, I expect it is.

Cr.-Q. 82. Well, there is no accessorial service performed in the receipt and delivery of an article from Carondelet to Jacksonville, is there? A. I should think so, a good deal.

Cr.-Q. 83. What accessorial service?

A. The messenger on the train in charge of it; I think his duties are wholly accessorial; if the messenger's duty in charge on the train is not accessorial I do not know what it is.

Cr.-Q. 84. How much time does it cost him to receive a package at Carondelet and deliver it at Jacksonville after getting off the train?

A. Well, sir, it costs him about 18 hours' time, and costs him his fare there, three and half cents a mile now.

Cr.-Q. 85. Do you mean to include in what you call accessorial service the service performed by a messenger on the car in transporting goods from here to Little Rock?

A. I think he has the most important part of our accessorial service to perform, the duty of the messenger on the road in charge of the goods is certainly the most onerous and arduous, and we pay as much for it as we do for any of our accessorial service.

765 Cr.-Q. 87. Then what did you mean in your [illegible] Glover's question in your examination-in-chief [illegible] to this question "Q. Is any part of the business [illegible] an express company, called accessorial; and, if so, what [illegible] your answer is: "All that part of the business done apart from the mere transportation by the railway company consists of the service just stated in my previous answer in the main part;" and your previous answer was this:

"Q. What steps, if any, are taken in the express business to collect the matter which is the subject of express shipment, and what steps, if any, are taken to deliver?

"A. We have wagons, drivers, and other employees who do the collecting of matter at the doors or from the stores of the consignors at the points of shipment, and we take such matter to the office where we weigh it, and way-bill it, and take it thence by wagons to the railway cars and put it in charge of messengers, who retain custody of it until it arrives at destination, or the railway office nearest destination, and we take it thence from the railway cars to the place for proper record, and we then deliver at the doors of the consignees, at their place of residence or place of business." Do you mean to say then that all your business is accessorial, all the business of the express company?

A. Accessorial to the transportation furnished it by the railway company; that is exactly my definition of the word "accessorial."

Cr.-Q. 88. You say in your examination-in-chief that accessorial service costs the companies more than the transportation of such matter costs the railway company?

A. That is my opinion, sir.

Cr.-Q. 89. How do you undertake to say what it costs the railway company to transport the articles?

A. I said, I think, in my answer that railroad statistics and the evidence in this case, that it costs the express companies more for accessorial service than the transportation costs the railroad company.

Cr.-Q. 90. Yet you do not know how much it costs the railway company to run a train?

A. I know it from railroad statistics.

Cr.-Q. 91. How many parcels constitute a ton of freight delivered here in St. Louis at your office?

766 A. I should say about 75, sir.

Cr.-Q. 92. Now, what would be the charges upon a ton of freight made by the express company upon this 75 parcels from here to Little Rock for example, made by the express company?

A. It would be made according to the classification of the company.

Cr.-Q. 93. Can you form an estimate of the amount received by the express company for the transportation of that number of packages containing a ton of freight between two given points, you have undertaken to average, what is a ton?

A. It would take a calculation, which I might make and give you.

Cr.-Q. 94. I want to know whether you can form an estimate in your mind?

A. I could not form a correct idea now as to what the Southern Express Company would charge on a ton of freight without looking at the tariffs and compiling a statement.

Cr.-Q. 95. You can form no opinion about it at all?

A. I could form an opinion, yes.

Cr.-Q. 96. How much per ton would it cost?

A. I should like to make a calculation before I form an opinion about it; it is a new question put to me.

Cr.-Q. 97. Have you ever formed an estimate as to how much per ton per mile the express company gets for the transportation of articles?

A. Yes, we get from twenty-five to thirty-five, and in some cases I expect, on very valuable goods, as much as forty cents per ton per mile.

Cr.-Q. 98. Not more than that?

A. Yes; I expect we got more in some cases.

Cr.-Q. 99. What did you say were the rates under the old contract between the Southern Express Company and the Iron Mountain Railroad Company?

A. $195 a day, with certain additional pay for excess; what the terms were I cannot say exactly.

Cr.-Q. 100. Was not that one and a half times the regular rate for merchandise?

A. I really am unable to state, because it has been sometime since I read the contract, and I am unable to state what the particular condition or rate is as to excess.

767 Cr.-Q. 101. You do not recollect it was one and a half times freight train rates?

A. I do not, sir.

Cr.-Q. 102. Suppose you were to dispense with what is called accessorial service in St. Louis; I mean, that part which consists of the delivery of packages by express wagons and messengers; can you form an idea what would be the profits of your business; supposing you were to require individuals to bring their own packages to be delivered to the express company without your bringing them?

A. No, sir, I cannot; it would be very hard for me to determine what the profits of our business are now, as they are.

Cr.-Q. 103. Has this been a custom of yours ever since your office was established in St. Louis, to have packages hunted up by the employees?

A. Ever since the establishment of our office, yes.

Cr.-Q. 104. Do you not look on that as a means of bringing business to the company?

A. I look upon it as a necessary adjunct to the business, as a cardinal and essential feature of the express business, which means dispatch.

Cr.-Q. 105. Is it your opinion you would do as much business in the absence of those agencies as with them?

A. No, sir; I do not think we would.

Cr.-Q. 106. You would not do more than half as much business, would you? A. I do not think we would succeed as an express carrier without them.

Cr.-Q. 107. That is true in regard to all express companies, is it not? A. I believe so; that is my opinion.

Cr.-Q. 108. Then it is a means of bringing business to the company?

A. Any part of any business which is an essential feature of it, and a necessary adjunct to it, must, of necessity, be an essential method of securing business.

Cr.-Q. 109. You say that is an adjunct to your business, and that it is really necessary to the existence of the business itself?

A. I believe so; absolutely necessary to the successful conduct of the business.

Cr.-Q. 110. Your idea is the railroad company ought to pay for it? A. Not at all, sir.

768 Cr.-Q. 111. That they ought to deduct from the ordinary charges of transportation enough to pay you for the accessorial services? A. Yes, sir.

Cr.-Q. 112. Without which you could not do your business at all? A. Yes, sir.

Cr.-Q. 113. You want the agency of the railroad to build up your business? A. No, sir; I did not say that.

Cr.-Q. 114. You say, when you receive packages at the express office you are not in the habit of opening them?

A. No, sir; we are not.

Cr.-Q. 115. But you generally inquire to know what is in them, do you not?

A. Our practice and custom is, and has been ever since my connection with the company, when a package is offered to us to ask the value; if the shipper says no value or declines to declare the value, we write, "value asked and not given;" the custom has been so extensive and so universal that we have rubber stamps in all our general offices which stamp the words "value asked and not given."

Cr.-Q. 116. You want to know what the article is; do you not?

A. No, sir; on the contrary, we never inquire, except we have reason to believe it is some explosive or combustible material.

Cr.-Q. 117. You never inquire what it is?

A. No, sir; we do not; we do sometimes, but it is not our practice; should think it a matter of curiosity on the part of the employee to do so.

Cr.-Q. 118. You undertake to carry articles which may turn out very valuable at very low rates of charge and run the risk of losing them without ascertaining what they are?

A. We endeavor to ascertain value, as I say, on simple inquiry.

Cr.-Q. 119. You do endeavor to ascertain what is in them?

A. The value, sir, not as to the contents, whether it be jewelry or what kind of jewelry, or whether it be lace, or whether it be diamond or cameo rings or anything of the sort; we make no inquiry as to the quality of the contents, but as to the value.

Cr.-Q. 120. Suppose you have a right to believe the contents to be different from what the shipper represents them to be; what is your course then?

769 A. Our practice is to receive them and forward them.

Cr.-Q. 121. At what he represents them? A. Exactly, sir.

Cr.-Q. 122. And take them without further inquiry?

A. Yes, sir.

Cr.-Q. 123. You do not claim any right to know what the article is or its value? A. No, sir; we do not.

Cr.-Q. 124. You have rates, haven't you, for particular articles—that is, you have different rates for some articles from rates for other articles?

A. I think express tariffs are generally misunderstood by the public; they think so; we have a classification of pounds under one hundred.

Cr.-Q. 125. Haven't you a special rate?

A. We have no special rate for lace as distinguished from diamonds, or a silk dress as distinguished from a calico dress; we have a rate on value when the value exceeds fifty dollars—say, a silk dress valued at $45 would be carried by the Southern Express Company to any part of its territory for the same sum that a calico dress valued at fifty cents would be.

Cr.-Q. 126. You have the same rate for looking-glasses as rocking chairs, then?

A. No, sir; we have the bulky articles—our classification implies an increased rate on bulky articles; plate glass—we charge, I think, on plate glass, three times one rate.

Cr.-Q. 127. That is because they require particular handling, is it not? A. Yes, and because great liability to break them.

Cr.-Q. 128. Not because of the weight?

A. No, sir; we are governed by the space it takes up—generally by two considerations, of course, weight and value, and the space it takes.

Cr.-Q. 129. If you are governed by those considerations in regard to particular articles, why isn't it important for you to know what those articles are?

Plaintiff's counsel objects to the question, because it is incompetent and irrelevant; the fact of the right of the express carrier to demand the quality of the goods and the contents of a package being a matter of law on which the witness' opinion is nothing.

Cr.-Q. 130. I wish to know why you do not inquire into those things, and why you did not require the express agents to inquire into them?

770 A. Well, sir, if a man who traded in plate glass were to bring a truss into an express office of the Southern Express Company and represent it as a window glass, and we knew he dealt in window glass, we could not make him disclose the contents of it;

but we would ship it same as if it was a window [illegible] believe that we have a right to demand whether it is plate glass or whether it be window glass.

Cr.-Q. 131. The charge is higher on plate glass than it is on window glass, is it not? A. Yes, sir.

Cr.-Q. 132. Suppose you had reason to believe it was plate glass and not window glass, would you feel bound to receive it as window glass? A. We would, sir.

Cr.-Q. 133. Would you receive it as such? A. Yes, sir.

Cr.-Q. 134. Then what does your classification amount to if you do not claim the right to inquire of those things?

A. It amounts to just what it reads; our rule is to inquire the value, and when it is given we insert it in the receipt and charge accordingly; plate glass is generally trussed and put up in such a way as to disclose for itself as to what the contents are.

Cr.-Q. 135. In connection with that you say you have carried money in sealed safes for the Government? A. Yes, sir.

Cr.-Q. 136. What were your charges in those cases?

A. We charge fifty cents a thousand over the Iron Mountain railroad for the Government in Arkansas.

Cr.-Q. 137. You happened to know in those cases what money was in the safe? A. The Government does not attempt to withhold from us the contents of the safes.

Cr.-Q. 138. You charge so much a thousand?

A. Yes, under the contract with the Government.

Cr.-Q. 139. There is a contract between the express company and the Government in regard to disclosing the matters carried that way, sealed safes and moneys carried?

A. I do not think the Government delivers sealed safes; I think the express company has an office in the Treasury at Washington; that is an opinion of mine, however; I do not know it of my own knowledge.

Cr.-Q. 140. Is it your own safe the money is carried in, or is it a Government safe?

771 A. I cannot say; I have seen sealed safes pass over the road, but I cannot say whether the safe was owned by the Government or the express company.

Cr.-Q. 141. You charge the Government so much per thousand for money carried that way? A. Yes, sir.

Cr.-Q. 142. Who seals it up?

A. I expect it is sealed at Washington, New York, or Philadelphia.

Cr.-Q. 143. You mean the safe is sealed?

A. The safe is sealed.

Cr.-Q. 144. Put in the safe by the officers of the Government?

A. Sent in charge of the express company's messenger, sealed generally by the office shipping it.

Cr.-Q. 145. And the company charges them if it is a hundred thousand so much, and if it is two hundred thousand so much more, in proportion to the amount carried? A. Yes, sir.

Cr.-Q. 146. You ascertain in the first instance how much money there is and they disclose it to you under this contract?

A. Yes, sir.

Cr.-Q. 147. But you do not treat every person in that way; do not require every person to say how much money they have got except their own voluntary statement?

A. Well, the statement from the Government is a voluntary statement in fact.

Cr.-Q. 148. Do shippers ever send agents of their own along with express matter carried by the express company?

A. No, sir; not to my knowledge.

Cr.-Q. 149. Never have done it?

A. I do not remember any case of the kind, sir.

Cr.-Q. 150. Well, if they were to ask to do it, what would you do in a case of that kind?

A. If they were asked to take charge?

Cr.-Q. 151. Yes, to ask to send a special messenger of their own?

A. That would be taking away our occupation from us; that is a novel question; I never had that question put to me, and as we have men specially employed for that purpose, I do not see on what ground they could found such a request.

Cr.-Q. 152. If the articles are brought to the express office by the shipper, you do not make any difference in the charge between that case and where they are brought by your own agents and employees to the office?

772 A. I wish to be understood as saying we make no difference for doing a part of the accessorial service, and doing the whole of it; in that case we would be doing part of the accessorial service, and not the whole of it.

Cr.-Q. 153. What you mean by accessorial service is the whole service done by the express company and agents?

A. I mean by accessorial service, that part done accessory to that done by the railway company.

Cr.-Q. 154. Everything that is not done by the railway company; everything except the mere matter of transportation?

A. Yes, sir; that is what I distinctly stated in my examination-in-chief.

Cr.-Q. 155. Your express company at Texarkana, you say, delivers articles tendered beyond the terminus of the Iron Mountain railroad to the Texas Express Company? A. Yes.

Cr.-Q. 156. You say that the Iron Mountain railroad express department makes no difference in the charges made to the express company on articles directed to Texarkana and those shipped beyond Texarkana? A. It makes none, sir.

Cr.-Q. 157. What is the rate from here to Texarkana?

A. $2.50 per hundred on certain articles of matter; $7.50 on another class; $15.00 on another class.

Cr.-Q. 158. You make rates beyond the terminus of the St. Louis, Iron Mountain and Southern railroad yourself, do you not? A. Yes, sir.

Cr.-Q. 159. To Galveston, for example? A. Yes, sir.

Cr.-Q. 160. [illegible] if you send an article from here to [illegible] mile from here to the point of destination, [illegible] carried it to Texarkana?

A. Yes, sir; the proportion of the revenue that accrues to the Southern Express Company is less on through packages than [illegible] packages.

Cr.-Q. 161. That is when you undertake to carry a package through? A. Yes, sir.

Cr.-Q. 162. Then you employ the Texas Express Company to deliver it at the point of destination? A. Yes, sir.

Cr.-Q. 163. You make no through rates with the Iron Mountain railroad, do you, on your own account——

A. Rather they make no through rates with us.

773 Cr.-Q. 164. Have they got a mode of transportation beyond the terminus of their road? A. No, sir.

Cr.-Q. 165. They could not well make a through rate, then, to Galveston, could they?

A. Yes, they might, I should think, allow us, the Southern Express Company, for through matter.

Cr.-Q. 166. But the Southern Express Company employs its own agents when it gets to the end of the Iron Mountain, don't it? A. It employs another and a different agency.

Cr.-Q. 167. But it has its own agents, and not the agent of the Iron Mountain Railroad Company? A. No, sir.

Cr.-Q. 168. Do you mean to say the Iron Mountain Railroad Company might make through rates for transportation over its own lines, than to deliver to your agent at the end of the line, and not their own agent?

A. Well, sir, they make a less rate for through matter over their line, when they employ the Texas Express Company to complete the transportation.

Cr.-Q. 169. The Texas Express Company is their agent, then? A. Yes, sir.

Cr.-Q. 170. Then it is their own contract for through transportation from here to points of delivery, they carrying to Texarkana and employing the Texas Express Company to carry to points of destination, and all matter carried by the Iron Mountain & Southern for you over its own road is delivered to your agent at Texarkana, and then its obligation ceases, don't it?

A. Yes, sir.

Cr.-Q. 171. I do not know whether you understand the question. How do you expect the Iron Mountain & Southern railroad to make through rates for you, when you employ your own agents, after the article gets to the terminus of the Iron Mountain; that would not be through transportation on the part of the Iron Mountain railroad, would it?

A. Well, I believe the cases are somewhat parallel; if I understand it, it is in this shape: That the Iron Mountain Railroad Express Company or the Iron Mountain Railway Company charges a less rate for matter originating at St. Louis and destined to Galveston,

Dallas, or any point in Texas, when carried by themselves or
through their express company to Texarkana. If the same
774 originated here and is taken charge of by the messengers of
the Southern Express Company, and all the accessorial service
is done by the Southern Express Company, I should think they should allow us the same rate, or less rate, in fact, than they do on the other shipments to Texarkana; they could thereby make a through rate in that way.

Cr.-Q. 172. You do not mean to say the Iron Mountain railroad would not carry your freight from here to Dallas on through rates, do you?

A. I confess the carriage of the Iron Mountain & Southern between St. Louis and Texarkana.

Cr.-Q. 173. Suppose express matter delivered in St. Louis to be delivered at Dallas, Texas, the Iron Mountain railway on its line of transportation will give you transportation to Texarkana or the terminus of its road, the express department of the Iron Mountain railway would receive your goods and transport them to Dallas, Texas, for the same fare that it charges an individual for transporting freight, would it not?

A. No, sir; they carry them to Texarkana only.

Cr.-Q. 174. Suppose you employ the express department of the Iron Mountain railroad to carry your freight, that is what I am talking about, would it not carry it for the same rate it carries for individuals?

A. I never tried that; I do not know what they would do.

Cr.-Q. 175. You say they would not carry your articles beyond Texarkana? A. I did not understand your question then, if that is your question.

Cr.-Q. 176. Yes, that is my question.

A. I beg pardon then for not understanding it.

Cr.-Q. 177. They would carry them for you for the same charges that they would carry them for me wouldn't they?

A. If the Southern Express Company should deliver to the Iron Mountain Railway Company or to the express department this matter into the custody of the express messenger of the railway you ask if they would carry our goods to Texarkana for the same price they would carry yours?

Cr.-Q. 178. Yes, sir.

A. I answer that has never been done, and I don't know what the conduct of the express department of the Iron Mountain railroad would be under the circumstances.

Cr.-Q. 179. You have never asked it to be done?
775 A. We have never asked it to be done, but, on the contrary,
we have refused it.

Cr.-Q. 180. The Iron Mountain Express Company can serve the public as well as you can in that respect, can't they?

A. I do not know that they can. That is a mere matter of opinion as between the conduct and management of two separate organizations. They do not, as I answered in my examination-in chief, receive paper for protest, and I consider that is a [illegible] element in the conduct of the express business.

Cr.-Q. 181. They do not do that, you say?

A. That is what they print in their instructions to their employees.

Cr.-Q. 182. The railway company charges you for a fifteen pound package, you say, $1.05?

A. No, sir; I did not say that; I answered 65 cents.

Cr.-Q. 183. They charged you then 65 cents for a fifteen pound package to Texarkana. If you undertake to carry that same package through to Galveston you reduce the rate from here to Texarkana because it is through transportation, do you?

A. Yes, sir.

Cr.-Q. 184. What per cent. of deduction do you make?

A. That is a matter I am wholly unable to determine. I would seek a through rate which I know would be less, and the amount or proportion of revenue accruing therefrom to the express company would be a matter of settlement between the auditor of the Southern Express Company and the auditor of the Texas Express Company.

Cr.-Q. 185. But you say the Iron Mountain railroad allows you no deduction in that case? A. Yes, sir.

Cr.-Q. 186. Isn't that because when that package gets to Texarkana, at the end of the line of the Iron Mountain railroad, it is delivered to your agent there—that is, the Texas Express Company—to be carried forward?

A. It is in the custody of our agent over the whole line.

Cr.-Q. 187. The Iron Mountain railroad does not undertake, and has not undertaken, to carry through freight from St. Louis to Galveston by way of Texarkana, and you have never asked them to do it?

A. We have asked them to give us transportation to Texarkana. We have refused to deliver into their custody our express matter.

776 Cr.-Q. 188. At Texarkana? A. Yes; at any point.

Cr.-Q. 189. That ceased, then, to be a through line, didn't it, as far as the Iron Mountain railroad was concerned?

A. I do not understand the question.

Cr.-Q. 190. Whether the transportation ceased to be transportation on a through line, as far as the Iron Mountain railroad is concerned, when it arrives at Texarkana?

A. I do not know in what respect. It does in respect to the stopping of the train of the Iron Mountain railroad at Texarkana.

Cr.-Q. 191. But you don't mean to say if you applied to the express department of the Iron Mountain railroad to carry one of your packages through *via* Texarkana to Galveston, that they would not make reduced rates, as for through transportation? A. If we should deliver it in their custody I would not undertake to say what they would charge.

Cr.-Q. 192. Isn't that the rule in regard to through transportation, that it has to be under the direction and control of the carrier to which it is first delivered until it gets to the point of destination? A. That is the custom; yes.

Cr.-Q. 193. But you take control of the article when it gets to Texarkana? A. We take control of it here when it starts.

Cr.-Q. 194. You take control of it on board the Iron Mountain railroad. The Iron Mountain railroad transports it to Texarkana by its own means of transportation?

A. You assume we take control of it there when in fact we assume control of it here, at the residence of merchants or private citizens.

Cr.-Q. 195. You do not mean to say you have absolute control of it? A. I do.

Cr.-Q. 196. You do not mean to say the conductor of the train from here to Texarkana has no control over your agent on the express car?

A. I suppose he has control of him as to his conduct if he don't behave himself.

Cr.-Q. 197. But as to the property in his charge he has, hasn't he?

A. I don't know that he has. That is a matter, I expect, of law. I do not know about that. I can state what we claim. We claim to retain custody of the matter, and to have charge of it over the entire line of road.

777 Cr.-Q. 198. The Iron Mountain railroad undertakes to carry it to Texarkana? A. Yes; to conduct the transportation of it.

Cr.-Q. 199. And you mean to say the carrier has no right to control the goods?

A. I mean to say he has no right to the custody of the goods.

Cr.-Q. 200. Do you know how many daily trains—passenger and mail trains—go out from St. Louis over the Iron Mountain railroad? A. How many leave here daily?

Cr.-Q. 201. Yes. A. About five, I believe, sir.

Cr.-Q. 202. How many at night and how many in the morning? A. Two in the morning and three at night, counting the De Soto accommodation.

Cr.-Q. 203. How many of those trains are you at liberty to carry express matter on?

A. We carry express matter on the two leaving on the Belmont Branch, and one leaving for Texarkana, and the one leaving for De Soto; we are not permitted to occupy the night train leaving for Texarkana.

Cr.-Q. 204. You have a night and a day train; have you the morning and evening train?

A. Not between St. Louis and Texarkana; who have between St. Louis and Columbus, Kentucky.

Cr.-Q. 205. Morning and evening train? A. Yes.

Cr.-Q. 206. This new train that you speak of, where does that go? A. It runs between St. Louis and Texarkana.

Cr.-Q. 207. Is it a morning and evening train?

A. It leaves here in the evening.

Cr.-Q. 208. And the other train you have to Texarkana, leaves when? A. In the morning.

Cr.-Q. 209. That is the new train you [illegible] permitted to carry matter upon, is it? A. Yes, sir.

Cr.-Q. 210. That, you say, is a passenger train, this new train? A. Yes, sir.

Cr.-Q. 211. Do you mean to say the Iron Mountain railroad carries its own express matter on it? A. Yes.

Cr.-Q. 212. Suffers you to carry your express matter on the other train? A. Yes, sir; suffers us.

Cr.-Q. 213. When do you claim that new train was started?

A. On or about the 7th of November, 1880.

778 Cr.-Q. 214. You applied for the carriage of express matter on that train, did you? A. We did, sir.

Cr.-Q. 215. You say the Iron Mountain railroad has an express car on that train? A. Yes, sir.

Cr.-Q. 216. And carries its own express matter?

A. Yes, sir.

Cr.-Q. 217. You never applied to the express department of the Iron Mountain Railroad Company to carry matter on that train, did you, in their express car, under the charge of their messenger?

A. No, sir; we thought we had a right to go on there and put goods in the custody of our own messenger.

Cr.-Q. 218. You have no reason to believe the Iron Mountain express department could not have carried your express matter on the same terms they carried their own on that new train? A. I have no reason to believe that they would not.

Cr.-Q. 219. You never asked them to carry it in that way?

A. I expect they would be glad to take charge of it, sir.

Cr.-Q. 220. You claim that you have a right to an express car on that train also?

A. That is what we thought. Under Judge Treat's order, we were entitled to the same terms and facilities that the road might accord to itself or any other express company in going over that road; taking that view of it, we attempted to assume those privileges.

Cr.-Q. What would you say was a charge for a chair for your messenger on the road? A. One dollar.

Cr.-Q. 222. Suppose you were to undertake to carry fifty chairs from here to Texarkana as express matter, what would you charge for it? A. We would charge tariff rate, sir, on them, if our messengers did not use them to sit on.

Cr.-Q. 223. I am not asking about chairs to sit in, but transportation? A. We would charge tariff rate.

Cr.-Q. 224. What would the tariff rate be, by the weight?

A. By the weight and by the estimate the Iron Mountain railroad puts on them.

Cr.-Q. 225. About a dollar a piece?

A. Yes; about a dollar a piece.

Cr.-Q. 226. You would not consider that an exorbitant charge?

A. I consider that it is; under the circumstances, because
779 our messenger pays fare and he ought to have a place to sit down.

Cr.-Q. 227. A space has to be occupied by the chair, nevertheless, hasn't it? A. Yes, sir.

Cr.-Q. 228. How much space as ordinary freight matter would that occupy? A. It does not take up as much room as a seat of a passenger in the coach.

Cr.-Q. 229. I am not speaking of that at all, but about the weight; the space occupied by the chair of the express messenger; suppose it was occupied by ordinary freight matter, how much weight would it be about?

A. It would depend altogether on the quality of the articles occupying the space.

Cr.-Q. 230. You charge for ordinary packages by weight, and you can specify some article, either ordinary freight matter or express matter?

A. If the chair weighed 8 pounds we would take it for granted it would occupy about twice as much space as an ordinary 8-pound package, and therefore double rate will be assessed on it.

Cr.-Q. 231. It would occupy as much space as an ordinary one-hundred-pound package—the space occupied by a chair?

A. Yes; but I was answering as to the rate assessed by the Iron Mountain Railroad Company on chairs and all express companies.

Cr.-Q. 232. But I am speaking of the space occupied by the chair; your ruling rate in the transportation of freight is the weight that governs in most instances? A. Yes, sir.

Cr.-Q. 233. Now, I ask how much ordinary freight could be carried in the space occupied by a chair in an express car?

A. Well, I expect they could carry all the way from fifty to one hundred pounds.

Cr.-Q. 234. And the weight on that from here to Texarkana, would be what? A. Fifty to one hundred pounds?

Cr.-Q. 235. Yes; one hundred pounds.

A. Well, sir, to look at the tariff I can tell.

Cr.-Q. 236. I thought you could recollect how much?

A. Well, all the way from a dollar to a dollar and a quarter or two dollars.

Cr.-Q. 237. You assume, then, that the express company has a
right to send a mesenger and the messenger has a right to
780 provide himself with comfortable accommodations, and that
you ought not to pay for it; that is the idea, is it?

A. I do not, sir, by any means.

Cr.-Q. 238. And this messenger has a right to sit in the car without additional charge, hasn't he?

A. That has been the custom ever since I have been connected with express companies.

Cr.-Q. 239. You never knew it to be refused?

A. Never knew it to be refused until in the case of the Iron Mountain Railway Company.

Cr.-Q. 240. He could make himself comfortable by occupying a seat in the coach without any additional charge?

A. Well, he is hindered by the instructions of the express company from going out of his car.

Cr.-Q. 241. But nothing prohibits him so far as the Iron Mountain railroad is concerned? A. Not that I know of, sir.

Cr.-Q. 242. You spoke in your examination-in-chief of having missed the connection at Little Rock with matter brought on the Memphis and Little Rock railroad, and that the Iron Mountain railroad refused to receive your express freight and carry it forward, by which you were occasioned a delay of about twelve hours? A. Yes, sir.

Cr.-Q. 243. When was that?

A. On the 19th of December, 1880.

Cr.-Q. 244. How long was the delay?

A. A delay for part of the matter—twelve hours—and for the other twenty-four hours; some of it was there as long as forty-eight hours before it got off.

Cr.-Q. 245. What was the occasion of its remaining there forty-eight hours?

A. Well, sir, A. E. Buchanan, division superintendent, sent me a letter, in which he stated all express matter not loaded when the baggage was loaded would be left for the next train, and we had to hurry up to get it aboard, and sometimes they did not give us a chance to get aboard.

Cr.-Q. 246. You could not get matter aboard of the car remaining there; did the car remain there as long as usual?

A. Well, sir, there was great complaint that it did not.

Cr.-Q. 247. You do not know anything about it?

A. I have seen the car switched down in the yard there on many occasions, and I think that some of the Iron Mountain
781 people who were a little friendly to our interests told us to hurry up; that they could not give us much chance; I do not know, but I think orders were out to leave us when they could.

Cr.-Q. 248. This was on what train you took to them this matter to ship?

A. I tried to have it shipped on one of the new trains that left St. Louis about 9 at night and arrived at Little Rock at 1 p. m.; the interview I had with Mr. Buchanan in regard to shipping at between 11 and 12 in the forenoon.

Cr.-Q. 249. That is a passenger train to Texarkana?

A. A passenger express train on which was shipped express matter of the Memphis & Little Rock Railway Company and the Iron Mountain & Southern Railway Company.

Cr.-Q. 250. You mean going to Texarkana? A. Yes, sir.

Cr.-Q. 251. Do you know what stoppage their time table requires at Little Rock on that train?

A. They take twenty minutes for dinner there, I believe.

Cr.-Q. 252. Do you know how long they stopped on this occasion? A. They stopped the usual time; I was there during the whole time; I do not think they were there any less than 20 minutes.

Cr.-Q. 253. Then it was not their fault you did not get your express matter on that train, was it? A. Clearly so.

Cr.-Q. 254. How? A. Because I applied to the chief representative of the road and he refused me permission, saying the Southern Express Company had no right on that train.

Cr.-Q. 255. That was the twelve hours' delay which you spoke of?

A. That was at the time when part of the goods were blocked up there, had been there twelve hours, and part twenty-four hours.

Cr.-Q. 256. I thought you said awhile ago one reason why you did not get the freight on was the car did not stop long enough?

A. I did not mean as to that train, at all; I mean as to the train that some of the forty-eight hours goods were on at that time; that was the other train on which we were shipping, the train leaving there in the morning.

Cr.-Q. 257. You did not explain that in your examination-in-chief; I would like you to give a statement of the whole
782 matter in regard to that delay; you only spoke of a twelve hours' delay in the examination-in-chief.

A. Well, that affair occurred in this wise: At Little Rock the Memphis and Little Rock railway runs into the Union Depot, and comes from Memphis, and over that line we ship a good deal of matter; that is, the Southern Express Company, and goods arriving there had missed the connection one night, delaying it twenty-four hours, and, on the night before, part of the goods arriving did not get off for want of time; so, when they did get off finally, some of them were delayed forty-eight hours, part by reason of our inability to ship on the new train, and part from our inability to ship even by the old train, having no time to get off the goods.

Cr.-Q. 258. Which old train was that; what time did it arrive at Little Rock?

A. It arrived about 2 o'clock in the morning.

Cr.-Q. 259. How long is the schedule time for stopping at Little Rock?

A. I cannot say exactly, sir; they have been between five and eight minutes; ten minutes sometimes, according to circumstances.

Cr.-Q. 260. Did they stop as long as usual?

A. Well, I complained to Mr. Buchanan—the train stopped as long as usual; I complained to Mr. Buchanan that the express car was taken from the train and switched down into the yard, and that the time consumed in stopping the train at Little Rock we could not utilize, for the reason that the express car had been taken to the yard.

Cr.-Q. 161. Was the same car taken on the train when it left Little Rock?

A. Yes; after a short time it came back and they put in another coach, and shifted around and put the same car in the train before it left.

Cr.-Q. 262. What was it taken down to the yard for?

A. Well, sir, I do not know.

Cr.-Q. 163. Was it detached from the train?

A. It was detached from the train.

Cr.-Q. 264. Didn't it remain stationary at any point long enough for you to put your matter on it?

A. It did not, sir; I complained to Mr. Buchanan [illegible] superintendent.

783 Cr.-Q. 265. What did Mr. Buchanan say?

A. Mr. Buchanan answered it was necessary for the car to be taken down into the yard.

Cr.-Q. 266. You do not know of any other reason than what he told you? A. No, sir; I only had my opinion of it; I do not know of any reason.

Cr.-Q. 267. You spoke of some warehouse at Little Rock you had been in the habit of using.

A. They had two express warerooms built by the Iron Mountain railroad that had been occupied for a number of years by the Southern Express Company.

Cr.-Q. 268. How long?

A. I think, sir, since 1875, some time.

Cr.-Q. 269. Occupied wholly by the Southern Express Company?

A. They were, at the time we were excluded from there, occupied wholly by the Southern Express Company.

Cr.-Q. 270. The Iron Mountain railroad was not using them for any purpose? A. No, sir; it did not.

Cr.-Q. 271. But the buildings belonged to the Iron Mountain Railroad Company? A. They are part of its depot fixtures.

Cr.-Q. 272. You never paid anything for them, did you?

A. I am unable to state that; I think they were fitted up by the Southern Express Company, and made convenient for the purpose of transacting our business, but I am unable to say whether we paid any rent or not for them.

Cr.-Q. 273. Who would know about that, whether they were rented to the Southern Express Company?

A. The cashier and auditor of our company would know.

Cr.-Q. 274. Here in St. Louis?

A. In Memphis; my impression is we did not pay for them.

Cr.-Q. 275. There were two rooms, you say?

A. Two rooms adjoining.

Cr.-Q. 276. What are they used for now?

A. Used jointly by the Memphis & Little Rock express department and the Iron Mountain & Southern railway express department.

Cr.-Q. 277. The Memphis & Little Rock express department is another company, is it, belonging to that railroad—the Memphis & Little Rock railroad? A. Yes, sir.

784 Cr.-Q. 278. Well, the business of the Iron Mountain has increased, I suppose, hasn't it, in the last year or two at Little Rock? A. I think Mr. Soper testified the other day the general freight business is not as good this year as last; I think that is a matter of knowledge with everybody that comes in contact with the road. Do you mean the express business or the freight business?

Cr.-Q. 279. Yes; the express business.

A. Well, there is not as large a volume of express business going over that line of road as last year at this time, I think.

Cr.-Q. 280. Those buildings are used by the Iron Mountain railroad express department?

A. And the Memphis & Little Rock express department.

Cr.-Q. 281. They belong to the Iron Mountain railroad?

A. Yes.

Cr.-Q. 282. You think they ought to furnish you those buildings free of charge to store your goods in?

A. I think they ought to extend to us the same accommodation as they do the Memphis & Little Rock express department.

Cr.-Q. 283. You do not know what the Memphis & Little Rock railroad express department pays for that, do you?

A. I do not, sir.

Cr.-Q. 284. Mr. Glover asked you if your agents were not liable to be exposed to the weather, and have their fright exposed, for want of some place to store it? A. Yes, sir.

Cr.-Q. 285. You think the Iron Mountain railroad ought to furnish your agents with umbrellas and overcoats, I suppose?

A. I do not think so, sir, any more than they ought their attorneys; not a bit more.

Cr.-Q. 286. Well, it is a mile, you say, from the principal part of the town of Little Rock down to the railroad depot?

A. Yes; I think a little over a mile; that is the estimate.

Cr.-Q. 287. You have an office in Little Rock? A. Yes, sir.

Cr.-Q. 288. How far from your office is it?

A. A little over a mile; our office is in the central portion of the town.

Cr.-Q. 289. You think it would be a good thing for the Iron Mountain to move its depot up town a little to accommodate you? A. I do not, sir; I never expressed myself that way.

785 Cr.-Q. 290. You have to haul your freight a mile before you get to the depot? A. Yes, sir.

Cr.-Q. 291. This delay that you speak of, of your matter at Little Rock; in what respect were you damaged by that?

A. It would be hard to determine the damage of delay to an express run in that way.

Cr.-Q. 292. You never had to pay anything on account of it, did you, for non-delivery of goods?

A. No, sir; I do not know that we have.

Cr.-Q. 293. No actual expense that you know of was incurred in consequence of that delay?

A. No, sir; not that I know of.

Cr.-Q. 294. It only occurred at this one particular time?

A. The delay is continual at Little Rock for goods that miss connection.

Cr.-Q. 295. You do not always miss the connection, do you?

A. We miss the connection very often, sir.

Cr.-Q. 296. How comes it you only speak of this one occasion?

A. I spoke of that as an instance when I went to the superintendent of the road—sought an interview with him.

Cr.-Q. 297. What do you know of any other instance in which there was a similar delay to the one you speak of?

A. Well, I know during the fall [illegible] rather as a rule than as an exception, [illegible] the South bound train on the Iron Mountain.

Cr.-Q. 298. You spoke in your examination-in-chief of a particular delay, and undertook to give the time of the delay of 12 hours, and now you add 48 hours to that on that account.

A. I would like to have my testimony read on that point, and you will find it is not 12 hours; I distinctly stated some of the goods was 24 hours, and I think some 48 hours.

Cr.-Q. 299. You spoke in general terms about not making connection; now, can you specify any other particular delay there?

A. I say during the fall months of November and December, 1880, that the connection with the Memphis & Little Rock and Iron Mountain railroad at Little Rock were missed very often, on all of which occasions the matter, if we had been doing business on the train leaving here at night, could have been forwarded 12
786 hours sooner on the new train; the express matter of the Memphis & Little Rock was forwarded as a practice continually on this new train 12 hours ahead of the matter of the Southern express.

Cr.-Q. 300. You have no express car or space in any express car on that new train? A. None, sir.

Cr.-Q. 301. You knew that when you shipped the goods via Memphis & Little Rock, do you not? A. Yes, sir.

Cr.-Q. 302. What time does your train arrive at Little Rock, this Memphis & Little Rock train?

A. It is due there about 30 minutes before the Iron Mountain is due, but arrives in all the way from two to three, and sometimes four hours late. It is making better time lately than during the very bad weather.

Cr.-Q. 303. You cannot mention, now, an instance in which they failed to make connection?

A. No, sir; they are very numerous indeed.

Cr.-Q. 304. Those things occur on all lines of transportation—failing to make connections, do they not?

A. It is naturally incident to transportation business.

Cr.-Q. 305. That is occasioned, I suppose, by some defect in the line of the Memphis & Little Rock, or by some injury to the engine or cars or something of the sort; or do you know what is the cause of it?

A. Well, sir; it is due to a combination of causes, by the weather, bad track and heavy trains.

Cr.-Q. 306. You know then it is liable to miss connection?

A. I do, sir.

Cr.-Q. 307. You think the Iron Mountain railroad ought to furnish you facilities to obviate that difficulty?

A. No, sir, I do not; I should say that the main or cardinal damage occuring from such continual practice of delay would be to divert our business from Memphis to the Memphis & Little Rock express department.

Cr.-Q. 308. Suppose the Iron Mountain had not put this new train on the line, do you contend it is their duty to do it in order to accommodate you?

A. I do not; but having done so, I think it should accord to us the same terms and facilities they accord to other express companies doing business over the road, especially to an express department which is not on their road, and does not give it the business that the Southern Express Company does.

787 Cr.-Q. 309. But you cannot specify any special damage you have sustained in consequence?

A. The special damage is, it diverts our business from Memphis to the business of the Memphis & Little Rock express department, and puts all our matter 12 hours behind what it has missed connection.

Cr.-Q. 310. Previous to the first of June, 1880, what was the charge made by the Southern Express Company for the carriage of a two and a half pound package from St. Louis to Texarkana?

Plaintiff's counsel objects, as incompetent and irrelevant.

A. I cannot tell you sir, without looking at the tariff then in use.

Cr.-Q. 311. Was it fifty cents?

A. I am not certain whether it was or not, it might have been; I would answer with great readiness if I recollected it distinctly, but I do not.

Cr.-Q. 312. Don't you know anything about the rates of the Southern Express Company before June, 1880?

A. Yes; I know something about them.

Cr.-Q. 313. Can you form any opinion as to about how much it was?

A. It may have been fifty cents, as you state, sir; the tariff was $3.25 a hundred pounds from St. Louis to Texarkana.

Cr.-Q. 314. I am speaking of smaller packages, making two, three and a half, and five pounds; do you recollect the tariff on a five-pound package between St. Louis and Texarkana?

A. I have a memorandum here of the tariff then in use, but that don't come under that head. A five-pound package, according to my best recollection, from St. Louis to Texarkana, was fifty cents, prior to the first day of June.

Cr.-Q. 315. Do you recollect what a two and a half-pound package was; wasn't it the same as a five-pound package?

A. I think it was fifty cents.

Cr.-Q. 316. Now, if it was fifty cents, what would that be per ton per mile between St. Louis and Texarkana, 83 cents, would it not?

A. I suppose it would be about that.

Cr.-Q. 317. You have stated in your examination-in-chief that sixty cents per ton per mile was an exorbitant charge as

788 applied to the Iron Mountain Railroad express department?

A. Yes, sir.

Cr.-Q. 318 But your company did charge at that rate before the first of June, 1880?

A. I applied my remarks to the charge by the railway company for transportation; I stated distinctly that my knowledge of express tariff, [illegible], by comparison [illegible] knowledge of what railroad tariffs were, [illegible] of such a charge by any railroad company; I [illegible] had never heard of such a tariff by an express company.

Cr.-Q. 319. You stated that you had computed the average earnings of the Iron Mountain Railway Company for five years, [illegible] 1875; and about how much did you make it?

A. About one and ninety-nine hundreds of a cent per ton per mile according to their reports.

Cr.-Q. 320. That was the earnings of the road?

A. That is the gross receipts per ton per mile according to their reports.

Cr.-Q. 321. Well, how do you arrive at the cost of transportation to a railroad, or did you undertake to fix what is the cost for transportation per ton per mile on a railroad during this period of time?

A. I stated according to the railroad statistics.

Cr.-Q. 322. "Reports" I have it?

A. "According to the railroad statistics;" I know that was my language, according to the railroad statistics that the cost would not exceed, &c.

Cr.-Q. 323. Now, what would the cost be in dollars and cents; did you undertake to fix what that is?

A. I find that a great many railroads carry a great deal of freight at about one-half cent per ton per mile, and therefore, I take it that they do not carry it below cost.

Cr.-Q. 234. Have you ever made any effort to ascertain the cost of the Iron Mountain Railway Company, that we are speaking of now, the transportation per ton per mile on the line of its road or between two points on its road, St. Louis and Texarkana for example, the coast to the road?

A. Their gross receipts show $1\frac{99}{100}$ of a cent per ton per mile,
and other roads carry a great deal of freight for less than
789 half a cent per ton per mile and one witness has stated, I
believe, when he was freight solicitor for the road, that the
basis of cost was computed to be one cent per ton per mile.

Cr.-Q. 325. That was on the Mississippi road? A. No.

Cr.-Q. 326. What road? A. The Iron Mountain.

Cr.-Q. 327. Who was it? A. Mr. Arnoux, and I take it that the cost is not more than fifty per cent. of the total receipts.

Cr.-Q. 328. That is a mere opinion of yours as a railroad man, is it not?

A. Yes, sir; from railroad statisticoes, from my knowledge of railroad statistics.

Cr.-Q. 329. Not from the railroad statistics of the Iron Mountain railway?

A. Their reports as well as those of others.

Cr.-Q. 330. I wish to confine you to the statistics of the Iron Mountain. It costs some roads to run a great deal more than others, don't it?

A. You do not find I have stated that it costs the Iron Mountain railroad so much per ton per mile to carry freight.

Cr.-Q. 331. I did not say you have.

A. You are trying to get me to state it now, which I do not undertake to do.

Cr.-Q. 332. If you can't do it, of course, that is all; you have stated in your examination-in-chief that the accessorial services of the express company had nearly cost as much as it costs the Iron Mountain to transport that freight from here to Texarkana. A. No, sir; you are mistaken.

Cr.-Q. 333. Well, from here to some point on the road—well, what did you state?

A. I stated, on an average, it would cost the express company more to do the accessorial services than it would a railroad company to transport the freight.

Cr.-Q. 334. Well, then you did not mean to apply it to the Iron Mountain railroad?

A. I think it might apply to the Iron Mountain railway with equal force.

Cr.-Q. 335. But yet you are not able to state what it costs the Iron Mountain Railway Company to transport that amount of freight. A. I can state what in my opinion——

Cr.-Q. 336. Exactly—then it is a mere opinion of yours?

A. Yes, sir.

790 Cr.-Q. 337. I am trying to get whether it is based on facts or an opinion. It is your opinion as a railroad man?

A. My opinion as an express man.

Cr.-Q. 338. Without being able to state what it costs the Iron Mountain railroad to do the transportation? A. Yes, sir.

Cr.-Q. 339. Well, when you speak of 1.99 you speak of the cost of transportation of ordinary freight?

A. No, sir; I speak of the gross receipts for the transportation of ordinary freight.

Cr.-Q. 340. Well, the gross receipts leaving out express matter—does it include express matter? A. No, sir.

Cr.-Q. 341. Your company does not do any business over the M., K. & T. road? A. No, sir.

Cr.-Q. 342. Has your company made any arrangement with other express companies that they would not do business over the M., K. & T. road?

Objected to.

A. Not to my knowledge, sir.

Cr.-Q. 343. Do you know of any arrangement having been made between the express companies about transportation over the different routes from St. Louis?

Plaintiff objected to the question, as incompetent and irrelevant.

A. Any arrangement as to forwarding matter over different roads?

Cr.-Q. 344. Yes, sir. A. No, sir; I don't know of any contract or agreement between them.

Cr.-Q. 345. You do not know then why the [illegible] Company does not transport matter over the M., K. & T. road? [illegible] I do not, sir; that is a matter that would only be within the knowledge, I suppose, of our general superintendent or the president of the company.

Cr.-Q. 346. Your attention was called to Exhibits Nos. 28 and 29, Exhibit 29 showing the tariff rates of the Iron Mountain railway prior to November 6, and subsequent, and you have undertaken to point out various articles on which you say there is an increased rate of charge for transportation, the article of beer, for example; what was the charge between St. Louis and Allenville on beer prior to November 6, 1880.

A. I had a memorandum before me at that time.

791 Cr.-Q. 347. In the first part of your answer in regard to that matter you say the St. Louis, Iron Mountain & Southern railway charged the Southern Express Company, on the 6th of November, and prior thereto, 60 cents a hundred pounds on certain articles, beer, ice, &c., to Allenville, Missouri; they now charge 75 cents per hundred pounds; what was the charge made by the Iron Mountain & Southern railway, prior to the 6th of November, for the return of empty kegs of beer from Allenville?

A. I believe they charged us ten cents each, sir; as far as my knowledge extends, they charge us up to this date; in fact, I have had as many as a half dozen letters in the last 3 days from agents complaining of the charge on empties.

Defendant's counsel asks that the last answer of the witness be stricken out; that which refers to complaint written or sent to him.

Cr.-Q. 348. You say they only charge ten cents for the return of a keg? A. Ten cents each, sir.

Cr.-Q. 349. Were those charges made from all the points you have named in the examination-in-chief?

A. For the return of empties?

Cr.-Q. 350. Yes. A. As far as I know they were; they were, and are, as far as I know.

Cr.-Q. 351. They are not charged now?

A. I think they are, sir; I know nothing to the contrary. I have endeavored to advise myself, and, as far as I have been advised, they do now charge; but, allowing they do not charge, that would still leave an increase of five cents per hundred pounds on beer between Allenville and St. Louis, because the rate charged November 6th, and prior thereto, was sixty cents per hundred pounds per keg; but if they do not charge anything on empties, and now charge seventy-five cents per hundred pounds, that would still be an increase of five cents a hundred pounds on the tariff in existence on the 6th of November, and prior thereto.

Cr.-Q. 352. So, if no charge is made on the return of the empty kegs, the charge is larger than before?

A. Yes; because, for example, at Peach Orchard, the charge on the 6th of November, and prior thereto, was seventy-five cents per hundred pounds; now it is $1.00 per hundred pounds.

792 Cr.-Q. 353. What articles do you allude to? A. Beer.

Cr.-Q. 354. If ten cents were rebated for the return of the empty, it would be actually eighty-five cents, and, as compared with one dollar, it is an increase of fifteen cents per hundred pounds.

Cr. Q. 355. You are charged ten cents; so that is all the charge for the return of empty kegs?

A. As far as I know, that is the circular issued——

Cr.-Q. 356. Do you know anything about it? A. I do.

Cr.-Q. 357. You say ten cents of that is charged for returning the empty keg? A. That is the rule, sir.

Cr.-Q. 358. How was it between St. Louis and Columbus, Kentucky? A. I don't know as to that point particularly.

Cr.-Q. 359. Do you know what the charge was for carrying beer from here to Columbus, Kentucky; how much a keg before the 6th of November?

A. 65 cents per hundred pounds.

Cr.Q. 360. Didn't they, at that time, charge you thirty-five cents for the return keg? A. I don't know, sir.

Cr.-Q. 361. You don't know what they did charge?

A. I have always understood that the charge was ten cents each; that is a circular that was issued.

Cr.-Q. 362. You mean from any point ten cents?

A. Yes; that is my understanding.

Cr.-Q. 363. Whether it be far or near?

A. Whether it be far or near; whether the rate be 75 cents or one dollar.

Cr.-Q. 364. Well, that is not my information.

A. Well, sir, that is my understanding of it.

Cr.-Q. 365. In this answer that you gave in regard to the increased charges, does that apply to beer entirely?

A. No, sir; on the 6th of November, and prior thereto, they charged the Southern Express Company 30 cents a hundred pounds to Jefferson Barracks on ordinary merchandise; they now charge 40 cents, and 35 to Sulphur Springs.

Cr.-Q. 366. They charge on empty kegs, don't they?

A. I am not talking about that, but ordinary merchandise; they charged 30 cents to Bailey's, and now it is fifty; 45 cents to Hematite, now fifty; and that applies not to beer or ice, or on anything in which there would have to be a return of empty vessels.

793 Cr.-Q. 367. That is the charge for ordinary merchandise? A. Yes, sir.

Cr.-Q. 368. They charge others the same, do they not?

A. I suppose so, sir; that is simply an increase over the tariff that existed on the 6th of November.

Cr.-Q. 369. Well, that don't apply to the Southern Express Company any more than any other shipper?

A. I cannot say, sir; I don't know what the Iron Mountain railway express department charges other shippers.

Cr.-Q. 370. You have always, and your agents, the Southern Express Company, refused to disclose to the officers of the railway company the contents of safes when they carried them [illegible] haven't you?

A. No demand has ever been made upon me or to my knowledge has ever been made on any of my messengers to know what the contents of a safe were; the revenue they derive now is greater than they charged the contents of the safe, and I don't suppose they want to know what is in them.

Cr.-Q. 371. Wasn't that because you refused to disclose to them the contents of the safe?

A. They never made any demand as far as I know, only on boxes or sacks.

Cr.-Q. 372. In regard to boxes and sacks, you have refused invariably? A. Yes, sir.

Cr.-Q. 373. Have you ever, as route agent, directed the agents of your company to ship freight by express at less than the actual weight? A. No, sir.

Cr.-Q. 374. Nowhere or any time?

A. No, sir; nowhere or any time; but, on the contrary, I have always been very particular to instruct them to ship at the actual weight.

Cr.-Q. 375. Hasn't it been done by the agents of the Southern Express Company? A. It may have been done.

Cr.-Q. 376. Hasn't it been done in reference to boxes of fruit?

A. Well, a 3d bushel box of fruit has been taken to weigh 16⅔ pounds; that is the standard weight, because it is impossible, and was fully demonstrated to the Iron Mountain Railway Company last year, to weigh each and every box of fruit brought to
794 the railway station at the time of shipment, for want of time and for want of force; but that has always been the estimate taken for an average, and when I instructed them to take them at 16⅔ pounds each, that was an estimate based upon actual weight in some cases.

Cr.-Q. 377. 16⅔ pounds, that would be about six boxes to one hundred pounds? A. 6 boxes to the hundred pounds.

Cr.-Q. 378. You did not know that those boxes weigh over 120 pounds to 125 pounds, the six boxes?

A. No, sir; I did not; on the contrary, I know they did not weigh as much as that.

Cr.-Q. 379. Do you know how much a keg of beer weighs?

A. I don't know that I could tell you exactly.

Cr.-Q. 380. At what rate has it been shipped—hasn't it been shipped at the weight of 65 pounds to the keg, when a beer keg weighs from 95 to 100 pounds?

A. It has been our custom to ship beer at 90 pounds to the keg, in some cases at less; I never gave any instructions to the agent to ship at that; it may have been done, sir.

Cr.-Q. 381. You don't know what the actual weight is?

A. No, sir; I do not; I do not remember to have weighed a keg for a long time.

Cr.-Q. 382. What property does the Southern Express Company own in the city of St. Louis?

A. There have been a great many questions asked about that; I can tell you all I know of the arrangement here and of the property here, and that is very little. When the Southern Express Company established an office in St. Louis, I came here with the then division superintendent, William Willis, and it was at first thought best to do our own accessorial service here in this city, to purchase wagons and teams for the purpose, but upon an estimate being made it was found that we could join forces with the Adams, as we were not competing with them for any business out of here, and do our business probably cheaper than if we bought wagons and equipped ourselves thoroughly for that purpose; and an arrangement was made, the terms of which I do not know, with the Adams Express Company to do our accessorial service here in the city; it was thought to be too costly an undertaking to establish an independent office, wagons, &c., for one road running out of the city of St. Louis.

795 Cr.-Q. 383. That still does not answer my question as to what property they own here.

A. I don't know, sir, what they own; I think we hire wagons and other property that we use of the Adams Express Company.

Cr.-Q. 384. Don't you know they don't own any property in the city of St. Louis?

A. I do not know that they don't own any property in St. Louis.

Cr.-Q. 385. They do not own any real estate, do they?

A. I don't know, sir.

Cr.-Q. 386. You don't know of any?

A. That is it, exactly; I don't know of any property that they own here; that is, not in my knowledge——

Cr.-Q. 387. I am not asking you what the Southern Express Company thought it advisable to do as a matter of business, but whether it owns any property or not?

A. I think I have answered that.

Cr.-Q. 388. Does it own any property in Arkansas?

A. Yes, sir.

Cr.-Q. 389. What property?

A. They own some horses and wagons at Little Rock, and safes along the line of the road elsewhere.

Cr.-Q. 390. Anything else?

A. We own all the equipage that is necessary to conduct an express business over the line of the road.

Cr.-Q. 391. What is the value of the property in Arkansas of the Southern Express Company?

A. I cannot answer, sir; it would be very difficult for me to form an accurate knowledge of it.

Cr.-Q. 392. Do you think an execution against the Southern Express Company for one thousand dollars could be made out of the property in St. Louis and Arkansas?

A. Yes, I feel very well satisfied it could.

Cr.-Q. 393. You would not know what to go to levy on here in St. Louis, would you?

A. If I had an execution, I think I could inform myself very fully in a very reasonable time, and as I think any [illegible] man could do.

Cr.-Q. 394. How long have you been route agent for the Southern Express Company? A. About six years, sir.

796 Cr.-Q. 395. Does the Southern Express Company own any property at Texarkana? A. Yes.

Cr.-Q. 396. What property do they own?

A. They own an office there, I believe, on the right of way of the Iron Mountain railroad, some safes, scales, trucks, &c.

Cr.-Q. 397. Of what value, all told?

A. I cannot tell, sir, exactly; don't know what the office cost, or the safes, or the trucks.

Cr.-Q. 398. In your opinion, what is the property owned by the Southern Express Company in the States of Missouri, Arkansas, and Texas?

A. It does not own any in Texas.

Cr.-Q. 399. Well, in Missouri and Arkansas, then, worth altogether the sum of ten thousand dollars?

A. I should say so, sir.

Cr.-Q. 400. How much more? A. I cannot tell, sir.

Cr.-Q. 401. Who would know about the ownership of this property? A. The cashier and auditor of the Southern Express Company, at Memphis.

Cr.-Q. 402. Is that its chief office?

A. The chief office of the Western division.

Cr.-Q. 403. What is the name of your auditor?

A. C. L. Loop.

Cr.-Q. 404. Are you acquainted with the tariff and classification tables of the American, Adams, and United States Express Companies?

A. I cannot say that I am, sir; I have seen them.

Cr.-Q. 405. Is that based upon the rate per hundred pounds for the transportation, do you know?

A. All express companies have a rate per hundred pounds, but the classification is arbitrary—what I call arbitrary; and when the rate per hundred pounds is determined upon, why then you look on the classification to find how much the packages are at a given rate per hundred.

Cr.-Q. 406. Do you know how it compares with your own tariff tables?

A. I think that the American Express Company's classification, or one very like it, is now in use both by the Southern Express Company and the Iron Mountain Express on the Iron Mountain road.

797 Plaintiff's counsel objects, as incompetent to make any inquiries into the charges of the Southern Express Company.

Cr.-Q. 407. You consider your own services as coming under the head of accessorial services, don't you—your own services as route agent of the company?

A. Accessorial to the services furnished us by the railroad company?

Cr.-Q. 408. Yes, certainly. A. And the pay of the messengers that go on the train with express matter?

Cr.-Q. 409. Yes. A. Everything except the costs of transportation on the road; I mean accessorial is a branch of the express business which is accessorial to the transportation furnished the express company by the railway company.

Cr.-Q. 410. I wish to ask you whether the Iron Mountain railway charges you for traveling on the train of the Iron Mountain as route agent?

A. Yes; and confines me strictly to a passenger car, not allowed to supervise business in the express car.

Cr.-Q. 411. Have you always paid full rates on the passenger car? A. I never paid any fare prior to June 2nd, 1880, on the Iron Mountain railroad.

Cr.-Q. 412. Since June 1st have you never had a pass on the road? A. No, sir; I have had a pass, but it was not good for anything; I had my annual pass.

Cr.-Q. 413. Did any of your agents have a pass of the Southern Express Co.? A. No, sir.

Cr.-Q. 414. Don't you know Mr. Whitfield and all the lawyers of the Southern Express Company have passes from the Iron Mountain? A. I have understood——

Cr.-Q. 415. I don't care about your understanding; do you pretend to know? A. I don't know that any of our people have had passes.

Re-examination by Mr. GLOVER:

Q. 1. What did you mean when you said you had a pass, but it was not good for anything; explain.

A. I mean that on the first day of January, 1880, I received an annual pass, reading "Good until December 31, 1880," from the St. Louis, Iron Mountain & Southern Railroad Company, and that on
the morning of the 2nd day of June, 1880, when I went to
798 the railway cars—the cars at St. Louis, of the Iron Mountain
railway, going to Little Rock—Mr. E. L. Dudley, assistant general superintendent of the road, mentioned to me that all of our passes were ordered to be taken up, and I went straightway and provided myself with sufficient money to pay my fare to Little Rock; I thought the conductor was not in earnest when he asked me for my fare, but I found he said he would eject me from the car if I did not pay it; therefore I paid it.

Q. 2. Have you ever used the pass since? A. No, sir.

Q. 3. Paid your fare since? A. Yes.

Q. 4. Paid full fare? A. Paid full fare.

Before signing the foregoing deposition, the witness desires to explain that the two express warerooms mentioned by him in the cross-examination as being occupied at Little Rock by the Southern Express Company were at the time of the exclusion of the

Southern Express Company occupied jointly by the [illegible] express department and the Southern Express Company.

GEO. W. [illegible]

By consent, the further taking of depositions in this cause was adjourned until January 26, 1881.

ST. LOUIS, January 26, 1881.

Parties met pursuant to adjournment.

J. B. RAGSDALE, sworn and examined as a witness on the part of the plaintiff, testified as follows:

Direct examination by Mr. GLOVER:

Q. 1. Where do you reside? A. Texarkana, Arkansas.

Q. 2. How long have you been there? A. Six months.

Q. 3. In what capacity have you been employed the last six months? A. I have been agent for the Southern Express Company and Texas Express Company.

Q. 4. At what place? A. Texarkana.

Q. 5. In the discharge of your duties as agent aforesaid what opportunity have you had, if any, to ascertain what the St. Louis, Iron Mountain & Southern Railroad express department charges their customers other than the Southern Express Company? A. Well, they always give me a memorandum of matter delivered over to us.

Q. 6. Who always gives you?

A. Their agent at Texarkana.

Q. 7. The agent of whom?

799 A. The St. Louis, Iron Mountain & Southern railroad express department.

Q. 8. Deliver to you for what purpose—you say of matter delivered to you? A. To be forwarded by the Texas Express Company to points in Texas.

Q. 9. What is the course of business when a shipment arrives at Texarkana of express matter through the express department of the St. Louis and Iron Mountain railroad—what is done when it arrives there? Just describe.

A. They make a memorandum.

Q. 10. What do you mean? A. Their agent, the express department agent, makes a memorandum of all the matter to be transferred to the Texas Express Company.

Q. 11. What is done with the memorandum? A. I file it.

Q. 12. It is given to you first, is it? A. Yes, sir.

Q. 13. Well, what does it show?

A. When I receive it from them it only describes the package or weight and their charges.

Q. 14. Does it tell where it comes from?

A. No, sir; it gives the destination.

Q. 15. How did you ascertain from where it came from?

A. I looked at the package and got the mark from the package.

Q. 16. Now, have you any statement—have you prepared any statement of express matter coming over the Iron Mountain railroad express department to Texarkana with any particular dates? A. Yes, sir.

Plaintiff's counsel produces and shows to witness exhibit marked Exhibit 31, and asks him if that is a statement such as he has mentioned? A. Yes, sir; it is.

Q. 17. Between what dates?

A. Between August 12, 1880, and January 12, 1881.

Q. 18. Will you read to the examiner the first item in Exhibit 31?

A. (Reads) One bundle, 15 pounds merchandise, A. W. Boren, Pittsburgh, Texas, from St. Louis, see B. P. No. 1, page 1.

Q. 19. State whether you received that package of 15 pounds? A. Yes, sir, I did.

Q. 20. At what time did you receive it?

A. August 12, 1880.

800 Q. 21. To what place was it destined?

A. Pittsburgh, Texas.

Q. 22. What is column A? A. That is the amount I paid the agent of the Iron Mountain express department.

Q. 23. For what? A. Transportation on the package from St. Louis to Texarkana.

Q. 24. What is column B?

A. That shows the Iron Mountain railroad express department's printed tariff.

Q. 25. Express tariff? A. Yes, sir.

Q. 26. What does that column show?

A. That column shows what the express department charges; that shows the excess that they charged to the public less than they do to the Southern Express Company.

Q. 27. According to the express department tariff rate, that bundle would have been charged 65 cents?

A. Yes, sir; and theo charged fifty.

Q. 28. It shows that they charged that shipper, Boren, 15 cents less than they would the Southern Express Company?

A. Yes, sir.

Plaintiff's counsel produces and shows to witness a book marked Exhibit B. P. No. 1, annexed to Exhibit 31.

Q. 29. State what that is.

A. That book contains a memorandum of matter delivered to me as agent of the Texas Express Company, by the agent of the Iron Mountain express department for matter from St. Louis to Texarkana carried by, and through the express department of the St. Louis, Iron Mountain and Southern railroad.

Q. 30. Is this a list of it, Exhibit 31?

Defendant's counsel objected.

A. Yes, sir.

Q. 31. State whether the items which are set down in this paper, Exhibit 31, are found in Exhibit B. P. No. 1?

A. Well, in number one and number two they are found.

Plaintiff's counsel produces and shows to witness a book marked Exhibit B. P. No. 2.

Q. 32. State what that is.

A. It contains a memorandum of matter delivered to me as agent
of the Texas Express Company, by the agent of the Iron
801 Mountain express department, of matter from St. Louis to
Texarkana through the express department.

Q. 33. State whether the items in Exhibit 31 are found in Exhibit B. P. No. 1, and No. 2? A. Yes, sir.

Q. 34. How may they be found?

A. By reference on Exhibit 31 to pages of Exhibit B. P. No. 1, and B. P. No. 2.

Q. 35. Now, take this case of Boren, August 12, one bundle, 15 pounds of merchandise, addressed A. W. Boren; destination, Pittsburgh, Texas, from St. Louis. See B. P. No. 1, page 1, column A, 50; column B, 65; column C, 15; now turn to B. P. No. 1, page 1, and show the examiner that item addressed to Mr. Boren? A. Yes, here it is.

Q. 36. Will you read it?

A. (Reads) "1 bundle, A. W. Boren, Pittsburgh, 15 pounds, charges 50 cents."

Q. 36. Now, in that case, you marked it on Exhibit 31 from St. Louis; how did you get that information?

A. From the bundle shippers' tag.

Q. 38. What was that tag; what did it show?

A. The tag says from Fisher B. & Co., St. Louis.

Q. 39. How did you get that 50 cents to put down in column A? A. That is the amount I paid the agent.

Q. 40. Do you see it on B. P. No. 1? A. Yes, sir.

Q. 41. How did you get 65 cents in column B?

A. By referring to express department's printed tariff rate.

Q. 42. Column C, is deducting fifty cents from 65 to show the 15? A. Yes, sir.

Q. 43. Now, I refer you to Exhibit B. P. No. 1, page 1, and ask you from whom you obtained the bill found on said page 1, containing this shipment to A. W. Boren; who did you get it from? A. From F. W. Brown, agent of the Iron Mountain express department.

Q. 44. At what place? A. Texarkana.

Q. 45. How do you know that the fifty cents was paid to him? A. Because I paid him according to his memorandum.

Q. 46. You paid it yourself? A. Yes, sir.

Q. 47. What was done when you paid that in respect to the shipment to M. Boren of the bundle?

A. I obtained the bundle from him.

Q. 48. What did you you do with it?
802 A. I forwarded it through the Texas Express Company to
Pittsburgh, Texas.

Q. 49. Do you know from your knowledge of the business transacted between the Southern Express Company and the St. Louis, Iron Mountain & Southern Railroad express department, with the Iron Mountain railroad express department charged for a fifteen pound bundle from St. Louis to Texarkana—I am not asking what is the rate upon their tariff, but what was their habit of charging, whether they charged the public tariff or not to the Southern Express Company?

A. Matter for Texarkana proper?

Q. 50. Yes, from St. Louis to Texarkana, according to their habit of charging, how much would that bundle have been to the Southern Express Company; what was their habit of charging for a 15-pound bundle from St. Louis to Texarkana, when the 15-pound bundle was shipped by the Southern Express Company? A. 65 cents.

Q. 51. I will ask you in regard to Exhibit 31, and of each item of charge here set down between August 12, 1880, and January 12, 1881, whether the statements in this Exhibit 31 show the shipment over the St. Louis and Iron Mountain express department, from St. Louis to Texarkana, between those dates? A. Yes, sir; they do.

Q. 52. Do they show all shipments? A. No, sir.

Q. 53. What part do they show?

A. Those are just samples.

Q. 54. Does this include the shipments that did not go beyond Texarkana? A. No, sir.

Q. 55. State whether all those sums of money set down in the column A, were paid by anybody; and, if so, by whom.

A. They were paid by myself, to the Iron Mountain express department.

Q. 56. What do they show?

A. They show the amount I paid for each and every article.

Q. 57. Paid to who, and for what?

A. Paid to the agent of the Iron Mountain express department.

Q. 58. For what?

A. For matter laid down there, forwarded from St. Louis to Texarkana.

803 Witness states generally of Exhibit- B. P. No. 1 and No. 2, that Exhibit 31 is a list of shipments received from the express department of the St. Louis, Iron Mountain & Southern railroad by the witness at or about the dates named in Exhibit 31, as agent of the Texas Express Company at Texarkana. Shipments from St. Louis to Texarkana, the same consigned to be forwarded beyond Texarkana; that memorandum of the charges by the railroad express department on said shipments accompanied said shipments, and said memorandum of charges are shown in Exhibits B. P. No. 1 and B. P. No. 2 at the pages mentioned in Exhibit 31; that witness himself paid the said charges on said express matter accompanying the shipments to the agent of the express department of the St. Louis and Iron Mountain railroad express department for said transportation from St. Louis to Texarkana by said railroad company; that column A, Exhibit 31, shows the amount charged the consignee by the St. Louis, Iron Mountain & Southern Express for

[illegible] in each case, and shows the same paid therefor by the witness. Column B shows the published express train rate of said railway company for such service by it. Column C shows the difference. Exhibit 81 does not set forth all express shipments by said railway company from St. Louis to Texarkana, but only [illegible], and only shows the shipments that went beyond Texarkana, and does not show those consigned to Texarkana only through said railway express department.

Q. 59. What did you say to this gentleman when you paid these bills; did you make any statement or declaration of any sort?

Objected to, as irrelevant and incompetent.

Q. 60. What do you know of beef chests, empty casks, at Malvern, Arkansas?

A. I was at Malvern each day from June 14 until July 2, [illegible].

Q. 61. Now, what do you know about empty beef chests?

A. The Iron Mountain express department compelled the Southern Express Company's agent to pay on empty meat chests from Malvern to St. Louis.

Q. 62. How many?

A. Some times there would be one each day and some days there would be two.

Q. 63. How much did they charge for those empty meat chests?

A. They charged them the regular tariff.

804 Q. 64. Was that by weight, or how? A. It was by weight.

Q. 65. Do you know whether they charged others?

A. They did not.

Q. 66. How do you know? A. Their agent told me so.

Defendant's counsel objected to what the agent said.

Q. 67. State what the agent said.

A. The agent said they did not charge on their own chests, but they did when they were forwarded by the Southern Express Company; and the agent also gave me his book, and I looked at it and saw that they did not.

Q. 68. What do you mean by their own chests?

A. Chests returned through their own department.

Q. 69. Chests belonging to shippers?

A. They were empty meat chests from the St. Louis Beef Canning Co. and Haggerty & Co. returned from Hot Springs free.

Cross-examination by Col. THOROUGHMAN:

Cr.-Q. 1. Mr. Ragsdale, tell us how old you are, please.

A. Twenty-five.

Cr.-Q. 2. How long have you been in the express business?

A. Eight years.

Cr.-Q. 3. In what company employed?

A. Southern and Texas.

Cr.-Q. 4. How long have you been connected with the first?

A. Eight years.

Cr.-Q. 5. In what capacity have you been engaged?

A. Clerk in the office, messenger, agent, way-bill clerk, messenger, and agent.

Cr.-Q. 6. How long have you been in Texarkana?

A. I have been in Texarkana only six months.

Cr.-Q. 7. How long have you been connected with the Texas Express Company; as long as you have been in Texarkana?

A. Yes; six months.

Cr.-Q. 8. You are filling two offices—agent for the Southern Express Company and agent for the Texas Express Company at Texarkana? A. Yes, sir.

Cr.-Q. 9. It appeared to me you said this; that in this case of Boren the Iron Mountain express department charged Mr. Boren more than it did anybody else; more than it had the public; what is it about that?

805 A. That is not it; it did not charge him as much as the Southern Express Company.

Cr.-Q. 10. That is what you mean to say, that it charged Boren less than it did the Southern Express Company?

A. That is what I meant to say.

Cr.-Q. 11. Do you mean to say, by your evidence, that the Iron Mountain & Southern express department charged the public generally less than it does the Southern Express Company; do you want the record to stand that way? A. Yes, sir.

Cr.-Q. 12. That it charges the public less than it does the Southern Express Company? A. Yes, sir.

Cr.-Q. 13. You want to stand by that answer? You have exhibited here a paper marked on the back Exhibit 31, did you make that paper? A. Yes, sir.

Cr.-Q. 14. Did you have any aid in making that?

A. No, sir.

Cr.-Q. 15. You had no help in making it? A. No, sir.

Cr.-Q. 16. When did you make it?

A. Well, I have taken a memorandum, that is, I made a note of the Iron Mountain express department memorandum each day, and I drew that off, that has been about a week ago now.

Cr.-Q. 17. This is in your handwriting, is it?

A. Yes; every bit of it.

Cr.-Q. 18. Did you have no direction about making it at all?

A. No, sir.

Cr.-Q. 19. You did it of your own volition? A. Yes, sir.

Cr.-Q. 20. Why did you make it?

A. Well, the Southern Express Company wished to know of me if I could show anything of the kind, and as I had always kept a memorandum, I could, and I made it and sent it to them.

Cr.-Q. 21. Then you made it because the Southern Express Company wanted it made, that is it, is it?

A. No, sir; I did not do that; I made it on my own hook.

Cr.-Q. 22. Why did you make it on your own hook?

A. For fear they might at some time need such a paper, and I thought I would have it in case they did.

Cr.-Q. [illegible] made it as a matter of precaution, for the Southern Express Company might need such a paper?

A. I did not draw it off till they called for it, and they asked me if I had such a thing; I had, and drew it off.

806 Cr.-Q. 24. Then, in its present form, you made it at their suggestion? A. Yes; in its present form.

Cr.-Q. 25. You knew you were going to be a witness in this case? A. No, sir.

Cr.-Q. 26. When did you first know that you were going to be a witness in this case?

A. It has been more than a week ago.

Cr.-Q. 27. You had this paper made at the time you received knowledge you were going to be a witness—it was then in its present form?

A. No; I did not make it until after I found out.

Cr.-Q. 28. You did not make Exhibit 31 until after you knew you were going to be a witness? A. Yes, sir.

Cr.-Q. 29. Then you made the paper? A. Yes, sir.

Cr.-Q. 30. And brought it here with you?

A. No; I forwarded it to Mr. Agee.

Cr.-Q. 31. Now, you say the public is charged less than the Southern Express Company? A. Yes; in that case.

Cr.-Q. 32. Do you say it because it is a fact in your knowledge, or because this paper says so?

A. Because it is a fact in my knowledge, and also because the paper says so.

Cr. Q. 33. The two propositions are in your mind to support what you say? A. Yes, sir.

Cr.-Q. 34. You have it in your own knowledge, and besides the paper says so? A. Yes, sir.

Cr.-Q. 35. Do you know how many items are in this paper?

A. No, sir.

Cr.-Q. 36. You do not know? A. No, sir.

Cr.-Q. 37. Could you guess within a hundred? A. No, sir.

Cr.-Q. 38. Could you within 200? A. No, sir.

Cr. Q. 39. You do not know there are 371 items in it or about that? A. No, sir.

Cr. Q. 40. Now, you say the uniform practice of the express department of the defendant is to charge the public less than it does the Southern Express Company in all the items you have furnished Mr. Glover in this paper, Exhibit 31?

A. Yes, sir.

Cr.-Q. 41. Is that their practice outside of the paper information and within your knowledge; did they do that with everybody? A. I don't know about that.

807 Cr.-Q. 42. Now, this item of Boren, take that as an example; that was freight shipped by the express department of the Iron Mountain railroad, was it? A. Yes, sir.

Cr.-Q. 43. First of all received by you at Texarkana, is that so?

A. Received by the Iron Mountain railroad and forwarded to Texarkana.

Cr.-Q. 44. First of all received by you at Texarkana is my question—you or the Southern Express Company?

A. For the Texas Express Company.

Cr.-Q. 45. What I mean to say is, it was in the custody of the Iron Mountain railroad, so far as you know, from St. Louis to Texarkana? A. Yes, sir.

Cr.-Q. 46. Your connection with it began at Texarkana?

A. Yes, sir.

Cr.-Q. 47. And you there received it as agent of the Texas Express Company? A. Yes, sir; that is it.

Cr.-Q. 48. Now, you say that you have compared this with the rate of tariff put forth by the express department of the railway company? A. Yes, sir.

Cr.-Q. 49. And, according to that, they charged Mr. Boren less than they would have charged you on a similar package by fifteen cents; that is what you want to say, is it? A. Yes.

Cr.-Q. 50. Now, do you know what the tariff of the express department of the railway company is on packages whose destination is Texarkana? A. Yes, sir.

Cr.-Q. 51. What is it?

A. Well, from St. Louis, at that time, it was $2.75 per hundred.

Cr.-Q. 52. What would be the charges of the Iron Mountain for carrying one bundle of 15 pounds of merchandise from St. Louis, and delivering it to its consignee at Texarkana?

A. Sixty-five cents.

Cr.-Q. 53. Then, if I understand you, it is true that the Iron Mountain Railroad express department has a tariff for packages going beyond its line, and a different tariff for packages going to the end of its line—is that so? A. No, sir.

Q. That is not? A. No, sir.

Cr.-Q. 54. Is that all you know about it, that you can simply say that it is not so? I am not trying to confuse you; I want to hear the truth.

808 A. You can't confuse me; I know exactly what I wish to say.

Cr.-Q. 55. What I want to know is this: Isn't it true that for packages destined to Texarkana, there to be delivered to the consignee, if on a package of 15 pounds of merchandise such a package they do not charge 65 cents; and if that same package was going, say, to Galveston, whether they would not charge only fifty cents for taking that package to Texarkana? I wish to know whether it is not true that in the express business, and particularly in the two express companies that are run over the Iron Mountain, where a package is destined to the end of the Iron Mountain railroad, if they do not charge one price; and if it is to be carried further by another express company, if they do not charge another and a larger price, or a lesser price—I don't know which way it is.

A. A less price to carry through than they would to Texarkana?

Cr.-Q. 56. Yes. A. No, sir.

Cr.-Q. 57. Now, I will put it in this way: Suppose a 15-pound package was consigned to Galveston, delivered to the Iron Mountain express department in St. Louis; now, it would carry it from here on its own line to Texarkana? A. Yes, sir.

Cr.-Q. 58. There it would have to deliver it to some other express company, would it not? A. Yes, sir.

Cr.-Q. 59. Now, would not they charge for that package, wouldn't the Iron Mountain railroad express department charge less for that package that was to go beyond Texarkana, less than they would if it was to stop right at Texarkana?

A. According to the tariff, they would not.

Cr.-Q. 60. Now, then, are you enough familiar with the express business to answer any more definitely than you have answered? Do you know the course of business that has been adopted from time immemorial, with reference to these two cases we are talking about, by different express companies, where one carries it part of its road, and another takes the package to the end of its road? A. Do they charge less?

Cr.-Q. 61. No; I ask if you are familiar enough to know the custom of express companies where they meet each other?

A. Yes, I am, in certain cases.

809 Cr.-Q. 62. Let us take this fifteen-pound package of merchandise; it is going, we will say, to Galveston, and the Iron Mountain Railroad Express Company takes it on its road as far as it goes, say to Texarkana; there it delivers it to the Texas Express Company; now, then, in that case, would not the Iron Mountain express department, by the usage of exchange between express companies, be obliged to charge less on that fifteen-pound package of matter that is to be delivered to the other express company than it would if the package was to stop at Texarkana? A. No, sir.

Cr.-Q. 63. You think not? A. No, sir.

Cr.-Q. 64. Doesn't your line of express run from Texarkana to Cincinnati *via* St. Louis?

A. No, sir; it goes over the Adams line from here to Cincinnati.

Cr.-Q. 65. You give through bills for express matter, do you not, from Texarkana *via* St. Louis to Cincinnati? A. Yes, sir.

Cr.-Q. 66. Now, is not the charge for carrying that property with the Adams Express Company?

A. No, sir; not from Texarkana to Cincinnati.

Cr.-Q. 67. How is it compensated—how do you manage it?

A. We have a rate to Cincinnati, and we charge on it so much through; do not recognize the Adams at all. I don't know how that settlement is made. That is made between the two companies.

Cr.-Q. 68. You do not want to say this, do you, that the Adams Express Company performs whatever service it performs in that behalf for nothing?

A. I do not know anything about that.

Cr.-Q. 69. But there are settlements that must necessarily take place between the companies of which you cannot speak?

A. Yes; I do not know anything about whether there is a settlement or not between the companies.

Cr.-Q. 70. All you do know in that case is the fact you give a through bill of lading *via* St. Louis to Cincinnati?

A. Yes, sir.

Cr.-Q. 71. And receive pay for it? [A.] Yes, sir.

Cr.-Q. 72. If any adjustment is made between the two companies you don't know anything about it?

A. I don't know anything about it, no, sir.

Cr.-Q. 73. You have been in the express business, you say, for eight years? A. Yes, sir.

810 Cr.-Q. 74. You went into it when quite a boy?
A. Yes, sir.

Cr.-Q. 75. How long have you held the important position you now occupy in the express department?

A. Only six months.

Cr.-Q. 76. What place did you leave just before coming to the agency you now have?

A. I was clerk in the Texarkana office—I was way-bill clerk not exactly in the Texarkana office, but for the Texarkana office, but I was not there.

Cr.-Q. 77. Where were you?

A. On the line, but the same as clerk in the Texarkana office.

Cr.-Q. 78. From that position you came six months ago to the one you are now in? A. Yes, sir.

Cr.-Q. 79. And that enables you, with six months' experience, to say whatever you can say of your knowledge outside of the actual actual papers that exist in your office? A. Yes, sir.

Cr.-Q. 80. That is all, is it not? A. Yes, sir.

Cr.-Q. 81. Now, let us pursue a little further this shipping of a package from Texarkana *via* St. Louis to Cincinnati, which is the smallest rate of the two; where you send a package directly from Texarkana to St. Louis, or from Texarkana by St. Louis to Cincinnati direct, clear through, which is proportionately the smallest charge? A. To St. Louis.

Cr.-Q. 82. With one bill of lading clear through to Cincinnati? A. There is no difference.

Cr.-Q. 83. You charge as much, do you, to take a package from Texarkana to St. Louis as you do to take it from Texarkana to Cincinnati? A. O, no.

Cr.-Q. 84. Well, then, how is it?

A. Do I charge as much from Texarkana to St. Louis as I do from Texarkana to Cincinnati?

Cr.-Q. 85. That is it. A. No, sir.

Cr.-Q. 86. Which is the least? A. To St. Louis, of course.

Cr.-Q. 87. Then how much less is it to St. Louis, then to Cincinnati? A. It is about $1.50 a hundred.

Cr.-Q. 88. Less?
A. Yes, sir, to St. Louis than to Cincinnati.

811 Cr.-Q. 89. What are your rates per hundred from Texarkana to St. Louis? A. Our present rates are $2.50 a hundred.

Cr.-Q. 90. What are they from Texarkana to Cincinnati?

A. According to that they would be $4.00.

Cr.-Q. 91. Well, how is the fact? A. Four dollars.

Cr.-Q. 92. So you charge two and a half from Texarkana to St.

Louis, and $4.00 from Texarkana to Cincinnati by way of St. Louis?
A. Yes.

Cr.-Q. 93. And the last work is done by the Adams Express Company from St. Louis to Cincinnati, the two lines carrying the work?
A. Yes, sir.

Cr.-Q. 94. So that, proportionately, you yourselves charge less where you carry goods to the end of the route and deliver them to another express company, than where you simply carry them to the end of your route and deliver them to a consignee?

A. O, no; no, sir.

Cr.-Q. 95. You do not?

A. No, sir; we charge by the tariff in every case.

Cr.-Q. 96. This is what I suppose, but I wish to ask if you do not charge by your own tariff rate more in proportion where you carry a package to the end of your own road, than where you carry to the end of your road, and there give it to another express company to forward it?

A. No, sir; we charge the same.

Cr.-Q. 97. What is the rate of charges, if you know, by the Adams Express Company from St. Louis to Cincinnati per hundred pounds?
A. I do not know.

Cr.-Q. 98. What are your charges on a 15-pound package of merchandise received at Texarkana and forwarded to its destination at St. Louis?

Objected to, as incompetent and irrelevant.

A. 65 cents on 15 pounds.

Cr.-Q. 99. In other words, to make a short story of all this, are not the published charges of the Iron Mountain express department as small or smaller, in the aggregate, than you charge the public for like service?

Objected to, as incompetent and irrelevant.

A. No, sir; they are exactly the same.

Cr.-Q. 100. Don't you charge a man for bringing a pound package from Texarkana to St. Louis by your express?

Objected to, as incompetent and irrelevant.

A. Fifteen cents.

812 Cr.-Q. 101. What does the Iron Mountain Express department charge for such a package?

A. 15 cents—I said awhile ago that the Adams Express tariff from St. Louis to Cincinnati I did not know, but according to our tariff it would be a dollar and a half—taking two and a half to St. Louis and one and a half to Cincinnati.

Cr.-Q. 102. Now, what do you charge for bringing a hundred pounds of express matter from Texarkana to St. Louis, and delivering it to a consignee?

Objected to, as incompetent and irrelevant.

A. At present it is $2.50.

Cr.-Q. 103. What does the Iron Mountain railroad express department charge for a like amount of express matter?

A. 100 pounds from Texarkana to St. Louis?

Cr.-Q. 104. Yes. A. At the rate of $2.50.

Cr.-Q. 105. Just the same as you charge? A. Yes, sir.

Mr. **Glover**: Do you mean what they charge according to the published rate, or in fact?

Col. **Thoroughman**: Yes, what they charge in both instances?

Cr.-Q. 106 (to witness): State if you have known them to charge any man whatever a less sum for bringing one hundred pounds to St. Louis than you charge, or $2.50; can you put your finger on a name of anybody who has done it?

A. From Texarkana to St. Louis?

Cr.-Q. 107. Yes; right square, whether they have charged any man less?

A. No, sir; I do not know of any instance.

Cr.-Q. 108. Now, I wish to ask this: this is the entire list as you testified in chief this morning in Exhibit 31, to your testimony, and comprises articles that were carried by the Iron Mountain Railroad Express Company to Texarkana, and there those articles were to go further by express, is that not so?

A. Yes, sir.

Cr.-Q. 109. You have said, have you, all that you can say in reference to the subject of charges upon the different packages I have been speaking of, one finding its home in Texarkana, and the other to go further by express? A. Yes, sir.

Cr.-Q. 110. You cannot make it any more explicit?

A. No, sir.

813 Cr.-Q. 111. Now, I will get you to state, if you can point out a single instance in this schedule of seven pages of items here, where the through rate, if it had been delivered—if the item or article had been given to the Southern Express Company in St. Louis, by them to be carried clear through to their destination, would have been any more than the rate that you have fixed in column A—I mean your through rate?

Objected to, as incompetent and irrelevant, because it is predicated upon the existence of a case which is not in Exhibit 31.

A. Yes, sir; I can.

Cr.-Q. 112. Now, just take it and see where it is.

A. The first one——

Cr.-Q. 113. What would have been your rate at its destination; at the rate through by the Southern——

A. I cannot tell, unless I had the tariff—the Southern Express Company's tariff.

Cr.-Q. 114. How do you pretend to say it is less?

A. I know it is less.

Cr.-Q. 115. How do you know it when you tell me you cannot say unless you had before you those two tariffs?

A. Because I know it is less, but I do not know the exact amount, it is less; I can tell you what it would have been; it would have been a dollar through instead of whatever it is.

Cr.-Q. 116. What were your charges on that package of Boren's, the first item here, from Texarkana to Pittsburg, Texas?

A. The Texas don't deliver it direct to Pittsburg, but carries to Jefferson, and there turns over to the railroad company, and our charge from Jefferson to Texarkana was twenty-five cents on a fifteen-pound package.

Cr.-Q. 117. What was the charge on the package from where you delivered it to its destination at Pittsburg?

A. I don't know; I do not know the railway company's tariff.

Cr.-Q. 118. What railroad company took it?

A. The East line.

Cr.-Q. 119. Is that a railroad doing its own express business?

A. I don't know whether it is or not; I do not think it is; it does a general railroad business; I don't think it does a general express business.

814 Cr.-Q. 120. Your book here ought to show what you charged A. W. Boren to Pittsburg on that package, ought it not?

A. No, sir.

Cr.-Q. 121. It would not? A. No, sir.

Cr.-Q. 122. This book, which is exhibit B. P. 1, and has the account of the Boren transaction in it, ought not to show what you charged on that package from Texarkana to the destination? A. No, sir.

Cr.-Q. 123. This book which I have in my hand, marked on the back "Southern Express Company Exhibit B. P. 1," contains bills of lading, does it not, that were furnished you of the things received from the Iron Mountain express department, and which you forwarded to their destination, that is what they contain, this and the other Exhibit No. 2?

A. Yes, it is a memorandum of each and every article and the charges.

Cr.-Q. 124. That is all they do contain?

A. Yes, well, I made a note where a package is from consigned, and this, that and the other; that is all they contained when I received them from the Iron Mountain express department.

Cr.-Q. 125. You compiled these two books yourself?

A. Yes, sir.

Cr.-Q. 126. And the intention was, as far as any bearing on the case was concerned, that it should contain a description of all the items that you made out in this schedule, marked Exhibit 21? A. Yes, sir.

Cr.-Q. 127. As you received the papers or packages from the Iron Mountain express department? A. Yes, sir.

Cr.-Q. 128. You say you did not take the items to make up this list as they come, but you took those you produced as samples of what the course of business was between you and the Iron Mountain express department?

A. I took all I could be positive about as they came.

Cr.-Q. 129. So it is in the business as it actually transpired from day to day? A. Yes, sir.

Cr.-Q. 130. As to the shipments beyond Texarkana?

A. Yes, sir.

Cr.-Q. 131. You spoke of being agent at Malvern from the 14th
of June to the second of July, you spoke of some empty
815 casks being returned; that is all you know about it what
you said before dinner—you know nothing about it since the
15th of November? A. I do not know anything about it after November.

Cr.-Q. 132. You do not know anything about after the second of July? A. No, sir.

Cr.-Q. 133. You do not pretend to tell the examiner that there has been any charges made by the Iron Mountain express department on such empty vessels or casks since the 12th of November at any point on the Iron Mountain railroad, do you? A. Well, I believe not.

Cr.-Q. 134. Do you know G. N. McFadden? A. Yes, sir.

Cr.-Q. 135. Do you know his handwriting? A. Yes, sir.

Cr.-Q. 136. Who was he? A. He is the Southern Express agent at Little Rock at present.

Cr.-Q. 137. Is that his handwriting? A. No, sir.

Cr.-Q. 138. Whose is it? A. That is Mr. Jacobs'.

Cr.-Q. 139. Who is he? A. Mr. McFadden's clerk.

Cr.-Q. 140. Do you know anything about his habit of signing the name of Mr. McFadden?

A. No, sir; I know nothing about it.

Cr.-Q. 141. Were you familiar in the office? A. No, sir.

Cr.-Q. 142. I will ask you if that signature is not Mr. McFadden's own proper signature? A. No, sir.

Cr.-Q. 143. Whose is that? A. Mr. Jacobs'.

Cr.-Q. 144. Do you know anything about his course of conduct in reference to signing the name of the agent by direction?

Objected to, as incompetent and irrelevant.

A. No, sir.

Cr.-Q. 145. Is Mr. McFadden agent of the express company at Little Rock now—the Southern Express Company?

A. He is; yes, sir.

Cr.-Q. 146. What were the duties of this man Jacobs?

A. Clerk in the office.

Cr.-Q. 147. In the office of the Southern Express Company at Little Rock? A. At Texarkana.

Cr.-Q. 148. Now, what are the rates of your company on a two-pound package from Texarkana to St. Louis?

A. Thirty cents.

Cr.-Q. 149. What are your rates upon that package from Texarkana to Cincinnati?

816 A. I do not know unless I looked at the tariff.

Cr.-Q. 150. Have you the tariff about you? A. No, sir.

Cr.-Q. 151. Can you get one? A. No, sir.

Cr.-Q. 152. Could you get one in ten minutes or fifteen minutes—could you get one at the office on 5th street?

A. From Texarkana to St. Louis to Cincinnati?

Cr.-Q. 153. Yes.

A. We do not send Cincinnati matter proper this way.

Cr.-Q. 154. You do not send matter to Cincinnati *via* St. Louis?

A. No, sir; Cincinnati sends it to Texarkana *via* St. Louis.

Cr.-Q. 155. What is your charge on a two-pound package that came from Cincinnati that you receive in St. Louis and carried to Texarkana; what would be your charge on that?

Objected to, as incompetent and irrelevant.

A. From St. Louis to Cincinnati?

Cr.-Q. 156. Yes. A. Thirty cents.

Cr.-Q. 157. Now, you say that you shipped no such packages that are destined for Cincinnati *via* St. Louis?

A. No, sir.

Cr.-Q. 158. You only receive packages that are brought from Cincinnati and carry them to Texarkana? A. Yes, sir.

Cr.-Q. 159. By what route do you ship packages that are started from Texarkana to Cincinnati?

A. By way of Memphis, over the Memphis & Little Rock road, and Memphis & Charleston and Cincinnati & Southern.

Cr.-Q. 160. What would be the charge upon a two pound package from Cincinnati to Texarkana, by way of St. Louis?

A. I do not know what it would be from St. Louis to Cincinnati, but it would be thirty cents from St. Louis to Texarkana.

Cr.-Q. 161. You don't know what would be the entire rate from Cincinnati to Texarkana?

A. No, not unless I examined the tariff.

Cr.-Q. 162. Can you step out a few minutes and look at it?

A. No; I would have to step to Texarkana.

Cr.-Q. 163. You cannot get information by going to your office on 5th street? A. No, sir.

Cr.-Q. 164. You could get it at Texarkana? A. Yes, sir.

Cr.-Q. 165. What means have you there of getting it?

817 A. We have a tariff from Texarkana to Cincinnati, and also from Texarkana to St. Louis, then we have a tariff there of the charges from St. Louis to Cincinnati.

Cr.-Q. 166. And the rate, if sent from Cincinnati to St. Louis? A. Just the same, yes.

Cr.-Q. 167. Haven't you that in the office on 5th street?

A. I do not know; we haven't got the Texarkana rates.

Cr.-Q. 168. What would your tariff be on a 2-pound package by Memphis, from Texarkana to Cincinnati?

A. I do not know that unless I examined the tariff; I am not familiar enough with it.

Cr.-Q. 169. Could you tell what it would be on a one-pound package? A. No, sir.

Cr.-Q. 170. Or upon any package?

A. No, sir; it would be four dollars a hundred on a hundred-pound package from Cincinnati to Texarkana *via* Memphis.

Cr.-Q. 171. And that is all you can remember about it?

A. Yes, sir.

Re-examination by Mr. GLOVER:

Q. 1. Do you know anything of a published tariff rate by the St. Louis & Iron Mountain railroad express department for charges beyond the termini of that railroad, for charges over the road beyond Texarkana, or charges from Texarkana over the railroad and beyond St. Louis?

A. I only have their agent's word that they have no such tariff.

Q. 2. Do you know of any? A. No, sir.

Q. 3. In answer to a question of Col. Thoroughman, counsel for the railroad company here, you assented to a statement of his that you received at Texarkana, the bills of lading for freight shipped over the Iron Mountain railroad express department to Texarkana; what do you understand as a bill of lading? A. I told him a memorandum, I did not tell him I received a bill of *of* lading.

Q. 4. You received no bill of lading?

A. No bill of lading, but a memorandum of freight charges on the goods.

Q. 5. These papers in Exhibits B. P. No. 1 and B. P. No. 2 are all the papers you received at Texarkana as charges against goods to go beyond Texarkana over the Iron Mountain? A. That is just a part, not all.

818 Q. 6. Yes; but I mean it is the paper you received there—the only kind of papers?

A. Yes, the original papers.

Signature waived.

By consent of parties, adjourned till to-morrow, January 27, 1881, at 2 o'clock.

ST. LOUIS, MO., *January* 27, 1881.

Parties met pursuant to adjournment. Plaintiff's counsel produces and offers in evidence contract, in the words and figures following, to wit:

This is an agreement made and entered into by the Louisville & Nashville Railway Company, a corporation duly created by the Legislature of the State of Kentucky, party of the first part, hereinafter called the Railroad Company, and the Southern Express Company, a corporation created under and in pursuance of the laws of the State of Georgia, and the Adams Express Company, a joint stock association, doing business under the laws of the State of New York, parties of the second part, hereinafter called the Express Companies, witnesseth:

First. That the Railroad Company, for and in consideration of the amounts hereinafter named, to be paid by the Express Companies, agrees, and binds itself to furnish the express companies sufficient space in good cars, warmed and lighted, on all mail and passenger trains, on all roads now or hereafter owned, leased, or operated by the Railroad Company, and upon reasonable notice, special cars whenever required, during the continuance of this contract, for the carriage of such express freights and matter as the Express Companies may offer for transportation, and as express companies usually and generally transport:

Provided, That it shall not be obligatory on the Railroad Company to furnish extra cars to such an extent as to impede the speed of its passenger trains.

Second. All express freight and matter carried under this contract shall be divided among the trains as the Express Companies may elect.

Third. It is further agreed that the Express Companies may receive and transport all such kind and character of express freights and matter as may be offered by the public to such Express Com-
panies for transportation, and as is generally and ordinarily
819 carried by Express Companies, and may regulate their own
charges on the same: Provided, Said charges shall not be less than fifty per cent. above the first-class freight rates of the Railroad Company, except for money, bullion, securities, jewelry, and valuable packages, or papers and perishable matter, and matter that may be transported in the United States mails, as to all of which exceptions the Express Companies shall be at liberty to make such charges as they deem best without regard to the restrictions above.

Fourth. The same system of rates and weights used by the Railroad Company in the transpoatation of those freights shall apply to the Express Companies in their transportation for the public.

Fifth. It is further agreed that the Express Companies will transport all monies and property of the Railroad Company over its roads herein set forth free of charge, the Railroad Co. assuming all risk of loss or injury thereto, except by theft or by dishonesty of the Express Company's employees. Where both parties to this agreement employ the same agents, the receipt of the express messenger on the train for money packages shall constitute a delivery to the Express Companies, and the receipt of the party to whom such money packages may be addressed shall constitute a delivery by the Express Companies.

Sixth. The Railroad Company agrees to furnish free transportation for all the employees, officers, agents, or servants of the Express Companies when traveling on the business of the Express Companies.

Seventh. It is further agreed that the Railroad Company shall not receive or forward for its own account or benefit on their mail or passenger trains any matter on which charges are made by itself, employees, or servants, except so far as it may be legally liable to do so.

This provision, however, does not apply to the extra baggage of passengers or to corpses, nor is it intended to prevent said Railroad Company carrying freight on mixed freight and passenger trains.

Eighth. It is further agreed that the Railroad Company shall furnish free of charge the Express Companies with sufficient space in its stations and depots at all way stations on its lines of road during the continuance of this contract for the transaction of such business of the Express Companies as they may have to transact.

Ninth. The Express Companies agree to handle, load, and unload

all express matter, and to assume all risks of loss and damage thereto, except for such loss or damage as may result from the gross carelessness or gross negligence of the Railroad Company, its agents, or servants, and to pay to the Railroad Company for the rights, privileges, and services hereby provided forty per cent of the gross
820 receipts arising in any way from any property or matter carried upon or over the lines owned, leased, or operated by the Railroad Company without deduction of any expense of any kind whatever, and the Express Companies hereby agree to keep a true and just account between themselves and the Railroad Company, and to render to the Railroad Company such statements and reports of daily business as shall enable the Railroad Company, should it desire, to keep a concurrent system of accounts between the parties hereto, and to check off the business transacted; and all the way-bills, books, and papers of the Express Companies relating to the business between the parties to this contract shall be subject to the inspection of persons designated by the Railroad Company for that purpose, and all such way-bills, book, and papers shall be preserved by the Express Companies for at least six months after the rendition of accounts based upon them, and the accounts for each month shall be rendered and the amounts due the Railroad Company shall be paid during the next succeeding month.

Tenth. It is further agreed between the parties hereto, that if at any time during the continuance of this contract, the Railroad Company shall make any contract or agreement with any other express company, incorporated or unincorporated, or with any person conducting or carrying on the express business at any lesser rate and more favorable terms than are herein provided for, then, and in such an event, the Railroad Company agrees forthwith, to give the benefit of such lesser rates and better terms to the Express Companies, parties hereto, during the remaining term of this contract, and the same shall be modified to conform thereto.

Eleventh. And whereas the Adams Express Company has heretofore occupied for express purposes the line of the said Railroad Company on its main stem between Louisville and Nashville, on its Bardstown and Knoxville, Richmond and Glasgow branches, and on the line between Bowling Green and State Line, and on the line of the St. Louis & Southeastern railway between St. Louis, Mo., and Evansville, Ind., it is hereby agreed that the extent of the interest of the said Adams Express Company in this contract, and the limits of its responsibility thereunder, are confined and limited to the said main stem, branches, and lines hereinbefore, in this paragraph particularly, specified, and that the interests of the said Southern Express Company hereunder extends to all the other lines of said Railroad Company as they are hereinbefore, and in paragraph one of this agreement, described and defined.

Twelfth. It is further agreed between the parties hereto that this contract shall remain in force from the date for the term of twenty years, unless sooner terminated by mutual consent, or notice as hereinafter explained, and the same to be amended from time

821 to time by consent of both parties, and after ten years may be terminated by six months' written notice from either party.

Thirteenth. It is hereby further agreed that the Express Companies shall purchase of the Railroad Company all the horses, harness, wagons, and safes now owned and used by it in its present express business over all lines of railroad owned, leased, or operated by it at cost price to said Railroad Company, and shall pay for the same in cash to said Railroad Company within thirty days after this contract goes into effect.

Fourteenth. The Express Companies will favor traffic over the Railroad Company's roads hereinabove cited, and agree to send, as far as practicable, over its lines, all through business, for which the lines of the Railroad Company are equally direct with any other line.

Fifteenth. All stipulations and agreements herein contained shall be binding upon the successors and assigns of the respective parties hereto.

Sixteenth. This contract shall take effect and be binding and in force between the parties from the date hereof, but the practical conduct of the express business by the parties of the second part thereunder, the Express Companies, shall not commence until the first day of February next, the delay being necessary to enable the party of the first part to arrange for closing up its express department, except as to that part of said Railroad Company's lines south of Nashville, upon which the practical conduct of the express business by the said Express Companies shall commence on the first day of January next, if practicable. It is understood and agreed that in the mean time the Express Companies shall not be disturbed in their present occupancy of part of said Railroad Company's lines, whether owned, leased, or operated by it.

In witness whereof, the parties hereto have hereunto affixed their respective corporate seals, and caused the same to be attested by their respective presidents, on the 28th day of December, A. D. one thousand eight hundred and eighty (1880).

LOUISVILLE & NASHVILLE R. R. CO.,
[SEAL.] By E. H. GREENE, *Pres't.*
SOUTHERN EXPRESS COMPANY,
[SEAL.] By HENRY B. PLANT, *Pres't.*
ADAMS EXPRESS COMPANY,
[SEAL.] By WILLIAM B. DINSMORE, *Pres't.*

822 Sealed and delivered in the presence of David Thompson and Charles Nettleton as to H. B. Plant, pres't, and Wm. B. Dinsmore, pres't.

It is mutually agreed by the Southern Express Company of the one part, and the Mobile and Montgomery Railway Company and the South & North Alabama Railroad Company, respectively, of the other parts, that all the terms of the foregoing contract, so far as they relate to the Southern Express Company, shall be, and they are hereby, adopted and ratified as a contract of the said Mobile &

Montgomery Railroad Company and the South & North Alabama Railroad Company, respectively, and the said Southern Express Company.

In witness whereof, the said companies have hereto affixed their respective corporate seals, and caused the same to be attested by their respective presidents, the 28th day of December, 1880.

SOUTHERN EXPRESS COMPANY,
[SEAL.] By HENRY B. PLANT, *Pres't.*

The instruments last read in evidence are admitted to be properly executed by the parties who purport to have executed the same; but defendant's counsel objects to the competency and relevancy of the papers in this case.

W. F. DREW, being produced, sworn, and examined as a witness on the part of the plaintiff, testified as follows:

Direct examination by Mr. GLOVER:

Q. 1. Where do you live?
A. I am living in St. Louis at present.
Q. 2. How long have you lived here?
A. About a year.
Q. 3. What employment are you in now?
A. Messenger of the Southern Express Company.
Q. 4. On what railroads are you running?
A. Running on the Iron Mountain, from here to Texarkana.
Q. 5. Were you present at any time at the Union Depot in July last; and, if so, will you state what took place there between some officers or agents of the St. Louis, Iron Mountain & Southern Railroad Company and some officers and agents connected with the Southern Express Company? Just state what you saw and heard.

A. On the morning, I think, of the 14th of July last I was at the Union Depot on my run in the car, part of my run put up
823 in sacks, and part in packing chests, and part just box freight. I was in the car, and Mr. E. L. Dudley, assistant superintendent of the Iron Mountain railroad, and Mr. Albright came into the car; and I heard Mr. Dudley say, "That freight cannot go down in that shape," and that they would have to have a scrip of the packages in those sacks and packages; and Mr. Albright refused to furnish the scrip, and Mr. Dudley said we would have to take it out of the car; and Mr. Albright refused to take it out of the car, and Mr. Dudley then went and got two of the train hands to take the sacks out. He examined the marks, and told the men to put those sacks out, and helped them to drag them out. Mr. Albright protested; it was not legal, right, etc., and that he could not do that; and he told him if he put them out it would be at his peril. He had the packages thrown out on the platform, and they laid there. Afterwards Mr. Kerens and Mr. Soper came into the car, and Mr. Kerens——

Q. 6. Who is Mr. Kerens?
A. Manager of the express department of the Iron Mountain rail-

road, and Mr. Soper is superintendent of the road. Mr. [illegible] wanted the packing chest opened and scrip of the packages taken, and then Mr. Albright again refused to have it done, and they demanded the chests to be thrown out, and Mr. Dudley and two men had the chests put out on the platform, and in course of fifteen or twenty minutes the train pulled off and the freight was left there, and there I was with about half of my run.

Q. 7. What became of the express freight of the Southern Express Company?

A. The last I saw of it, it was on the platform there.

Q. 8. Do you know whether it went out on that railroad train? A. It did not go out on that train; no, sir.

Q. 9. What do you mean by scrip?

A. It is a list of freight.

Q. 10. What freight? A. The freight in those sacks and packing chests.

Q. 11. Who was it that was demanding the same?

A. Mr. Dudley, the assistant superintendent.

Q. 12. Will you state anything that he said about those sacks? A. He said the Iron Mountain railroad would not allow the freight to go in that shape; that they would have to have a scrip of it.

824 Q. 13. How was the scrip to be got of it?

A. To open the sacks and to call off the names of each package separately.

Q. 14. Mr. Albright said he would not do it?

A. Yes, he refused to do it.

Q. 15. And the sacks were thrown out? A. Yes, sir.

Q. 16. How many? A. I think there were seven.

Q. 17. Did Mr. Dudley explain why he did that, why he would not receive it?

A. Well, he would not receive it because he wanted to get the scrip of those packages; would not receive it in that shape; that is the reason for not receiving it in that shape.

Q. 18. That is all you know about it?

A. Yes, all about that case.

Q. 19. Do you know any other case?

A. I was at Union Depot at night when they wanted to send out a messenger on another train, and they would not allow it.

Q. 20. Go on and tell about that; where did it happen, and when, and all the facts?

A. I do not remember the date, but I think it was the night train that goes out about 8.50 at night.

Q. 21. Was that a regular or a new train?

A. A new train.

Q. 22. What time did it go out the first time?

A. I think about 8.50 or 9.

Q. 23. How many of those new trains had run before this took place that you are about to tell of? A. I think three.

Q. 24. This was the 3rd or 4th of the new trains?

A. Somewhere about that; I do not remember exactly; not over the 3rd or 4th.

Q. 25. You mean the second or third trip of that new train?

A. Yes, sir.

Q. 26. Now state what took place.

A. Well, I was at the cars when the messenger with a wagon of freight for the Southern Express Company was driven to the car; the car door was partly open, and he stepped in—had got about half way in the car—and Valentine, the agent at the depot of the Iron Mountain Express Company, shoved him out of the car, and would not let him get in, and closed the door and fastened it.

825 Q. 27. State what was said.

A. I could not hear what the conversation was between them, because it was raining very hard at the time and considerable noise there.

Q. 28. What time was that?

A. Perhaps an hour before the train left.

Q. 29. What month?

A. I have forgotten the month; I did not keep the date of the occurrence.

Q. 30. Was it fall or winter? A. In the fall.

Cross-examination by Col. **Thoroughman**:

Cr.-Q. 1. How long have you been connected as messenger with the Southern Express Company?

A. About two years and a half.

Cr.-Q. 2. Are you still in their employ? A. I am, sir.

Cr.-Q. 3. You say that about the 14th of July you saw Mr. Dudley and Mr. Albright at the depot?

A. Yes; I saw them in the car.

Cr.-Q. 4. When Mr. Dudley wanted a list of the articles that you were shipping? A. Yes, sir.

Cr.-Q. 5. You were asked by Mr. Glover to tell him what Mr. Dudley said; don't you remember anything he said on that occasion as a reason why he wanted it?

A. Well, as I understood the reason he wanted it, I stated awhile ago he wanted to get the scrip of those packages.

Cr.-Q. 6. Was that all he said?

A. I did not hear why he wanted it.

Cr.-Q. 7. Didn't he tell you why?

A. No; I was standing in the car, and they had a short conversation; I merely heard this part of it.

Cr.-Q. 8. You did not hear Mr. Dudley say to Mr. Albright that he had information that the express company was not dealing fairly with them and secretly putting up valuables in sacks, and that he wanted to know whether it was the case then with those sacks or not?

A. No, sir; I did not hear all the conversation; they had some conversation before they came in there——

Cr.-Q. 9. I wish to refresh your memory, and ask if this did not happen—if Mr. Dudley did not tell Mr. Albright he had been informed the agents of the Southern Express Company
826 had been in the habit of putting their safes on cars empty,

and carrying money and other things on their persons, and after the train got in motion to then open the safe and put it in?

A. No, sir; I did not hear that.

Cr.-Q. 10. You say they had a conversation that you did not hear? A. Yes.

Cr.-Q. 11. You saw them conversing? A. Yes, sir.

Cr.-Q. 12. You do not know what happened in that conversation? A. No, sir.

Cr.-Q. 13. The part you heard was that Mr. Dudley wanted him to open the sacks?

A. Yes; he refused to let them go in that shape.

Cr.-Q. 14. What reason he may have given in the conversation you did not hear for that request, and you do not know?

A. No; I do not remember it.

Cr.-Q. 15. Mr. Soper and Mr. Kerens appeared, you say?

A. Yes, sir.

Cr.-Q. 16. Did you hear what transpired between Mr. Kerens and Mr. Soper, on the one part, and Mr. Albright, on the other, in reference to the request made by Mr. Kerens for a list of scrip of those packages?

A. I merely heard him demand it, and want to know what was in it; and I heard him say, when I come to think of it, that there was something said about packing chests being sealed, and Mr. Kerens asked Mr. Albright to break the seal off and open it, and Mr. Albright told him that he would not, and that he should break the seal if he wanted to.

Cr.-Q. 17. What particular package was that?

A. No package; a packing trunk full of packages.

Cr.-Q. 18. Mr. Kerens requested him to break the seal and let him see what was in it? A. Yes, sir.

Cr.-Q. 19. What did you hear of the conversation that took place between Mr. Kerens and Mr. Albright?

A. I heard that part; I did not pay particular attention to everything that was said; there was three or four in the car at the time.

Cr.-Q. 20. What were you doing; didn't you delay putting away your packages?

A. No; standing round, looking on.

Cr.-Q. 21. To see what was going to take place between those two gentlemen? A. Yes, sir.

827 Cr.-Q. 22. Didn't you know there was then existing a controversy between the Iron Mountain and Southern Express as to the manner of your business—I mean the Southern Express business? A. No, sir.

Cr.-Q. 23. Didn't you know of complaints being made by officers of the Iron Mountain railroad express department about the manner of your putting your goods on the trains?

A. That was the first I had heard of it that morning when they came and threw them out; the first train they ever attempted such a thing on.

Cr.-Q. 24. So you did not know that the Iron Mountain express department was making complaint through its officers of the responsibility that was being put on it by the Southern Express Company without any corresponding benefit; you did not know anything about that? A. No, sir.

Cr.-Q. 25. Mr. Drew, you were down at the train some time after the event I have been describing in July, when the second or third trip of the new train was ready to start?

A. Yes, sir.

Cr.-Q. 26. You say that somebody was pushed off; now, who was that person that was pushed off the train?

A. W. J. Obermeyer.

Cr.-Q. 27. Do you know Mr. Arnoux? A. Yes, sir.

Cr.-Q. 28. Was Mr. Arnoux there that night?

A. I saw him over at the Union Depot office; I do not know whether he was over at the train or not.

Cr.-Q. 29. Who is Mr. Arnoux, in reference to the Southern Express Company, or who was he then?

A. He was fare manager at Union Depot.

Cr.-Q. 30. Well, you think that is the second or third trip that train was going to make? A. Yes, sir.

Cr.-Q. 31. Your express company had never done any business on that train at all? A. No, sir; not that I know of.

Cr.-Q. 32. It was a rainy night, was it? A. Yes, sir.

Cr.-Q. 33. If Mr. Arnoux should state that the train left in 15 minutes after the door was closed, the door was closed on the south side of the train, was it not? A. Yes.

Cr.-Q. 34. Now, if he testified that the train left in 10 or 15 minutes afterwards, he would be mistaken about that just an hour, you think?

828 A. I don't know whether an hour or fifteen minutes; I might have said 15 minutes afterwards——

Cr.-Q. 35. No, but you say you think it stayed there an hour after its refusal to admit a person?

A. I do not know whether I did or not. Well, I never kept the time, what time it was there.

Cr.-Q. 36. Are you able to fix the time definitely within five minutes; would you undertake to do that?

A. No; I would not; I never looked at a watch when I went there or came away.

Cr.-Q. 37. So, in point of fact, the train might have started in a few minutes after the refusal to admit the man?

A. Some little time I know; I know I stood in the rain some time.

Cr.-Q. 38. Do you know the reason that man was shoved out of that car? A. No; I do not.

Cr.-Q. 39. Do you know whether this is the fact or not, that it was at night—Saturday night? A. Yes, sir.

Cr.-Q. 40. 8 or 9 o'clock? A. Yes; night.

Cr.-Q. 41. A dark night and raining? A. Yes, sir.

Cr.-Q. 42. Was the north door of the car open as well as the south?

A. The north door was open and the south was not.

Cr.-Q. 43. The south door was not open?

A. No; he shoved it open and got in.

Cr.-Q. 44. This man, the employee of the Southern Express Company, went on the south side, shoved the door open and walked in? A. Yes, but he did not get quite in; he got about half way in.

Cr.-Q. 45. He got about half way in, and was put out?

A. Yes, sir.

Cr.-Q. 46. Wasn't it stated there to him, that he must not open that door at that hour of the night, dark as it was; it was dangerous to expose property that way, that he must come in on the other side? A. No, sir; I did not hear it.

Cr.-Q. 47. State whether it is a fact in loading cars there, if they do not always, at night, keep one of the express doors of the cars closed?

A. I do not know whether they do or not; I never loaded cars there.

Cr.-Q. 48. You do not know whether that is necessary precaution against thieves or not?

829 A. I do not know whether it is or not at that depot.

Cr.-Q. 49. You are a messenger on the Iron Mountain railroad in the employ of the Southern Express Company?

A. Yes, sir.

Cr.-Q. 50. Have you been continuously so engaged since June last? A. Yes.

Cr.-Q. 51. State whether you did or not put your express cases and sacks and trunks on the Iron Mountain cars, sealed up, and then after you got in motion open them.

A. No, sir; I haven't had any trunks; I did not carry any trunks.

Cr.-Q. 52. How with other packages?

A. What other packages?

Cr.-Q. 53. Well, sacks?

A. I did not carry any sacks or packages.

Cr.-Q. 54. What did you carry?

A. Boxes of freight and packages of freight.

Cr.-Q. 55. Did you open any of those packages along the line at all? A. No, sir.

Cr.-Q. 56. Never have?

A. I did previous to the time they commenced throwing out them sacks; we opened them, but since that nothing has been opened.

Cr.-Q. 57. Haven't opened the safe for any purpose?

A. I opened the safe, of course, to put money in, or anything of the kind.

Cr.-Q. 58. You opened the safe along the road?

A. Yes, sir.

Cr.-Q. 59. You took out and put in, as occasion required, out of the safe? A. Yes, sir.

Redirect examination by Mr. GLOVER:

Q. 1. Which side of the baggage car there at the depot, the St. Louis & Iron Mountain railroad depot, was usually the side for the express company's agents to go in at?

A. Well, from the position of the train; it depends a good deal on that; in daylight we generally load on the south side; sometimes when both companies are loading at the same time we use both doors—both sides of the car; when only one generally use the south side from the position of the train; better place for a team to stand.

830 Q. 2. State whether it is usual to use either side or both according to circumstances.

A. Yes; if two wagons come there it is usual for one to use one door and the other the other.

Q. 3. Did you see any of those sacks put up at the time the sacks were thrown out; had you seen them put up in the warehouse before they were delivered? A. Yes, sir.

Q. 4. Who was present at the time?

A. The scrip man was there.

Q. 5. Did he see the sacks put up? A. Yes, sir.

Q. 6. Bundles put in and the sack closed? A. Yes, sir.

Q. 7. It was not done secretly? A. No, sir.

Recross-examination by Col. THOROUGHMAN:

Col. THOROUGHMAN: Who was that agent of the Iron Mountain railroad that saw that done? A. I do not remember distinctly; they had three or four scrip men there, I think a man named Briggs at that time; not positive, though.

Cr.-Q. 1. Do you mean he was engaged in taking a list of those packages that went in those sacks?

A. No, sir; he took a list of the sacks after they were made up.

Cr.-Q. 2. Was his attention called to the fact that you were making up those sacks to be sent out by your express?

A. Yes; he knew it.

Cr.-Q. 3. When you were making up the packages?

A. Yes.

Cr.-Q. 4. When you put them in the sack? A. Yes.

Cr.-Q. 5. Did you ask him to make a list of the packages?

A. I did not ask him; he never offered to take it, and never was refused.

Cr.-Q. 6. What do you mean—was he present at the spot where the sacks were being filled up? A. Yes, sir.

Cr.-Q. 7. What was he doing? A. Looking on.

Cr.-Q. 8. Did you ask him to take a list of them or tell him what you were doing; what did you say to him?

A. I did not say anything to him. It was not necessary to tell him what we were doing; he could see.

Cr.-Q. 9. He knew just where you were going to send them? A. Yes, sir.

Cr.-Q. 10. You mean a man simply in the employ of the Iron Mountain was in that building? A. Yes.

Cr.-Q. 11. Was he casually there?

831 A. No, sir; there on business; he came every morning to scrip that freight.

Cr.-Q. 12. Where was he when the colloquy took place between the agent of the Iron Mountain railroad and Mr. Albright at the car? A. He generally waits there because sometimes something comes in after the main part of the freight comes; sometimes fish or game is sent to the depot, and he sends there to get the scrip of them, and after the last wagon goes, he goes to get everything that goes in the car.

Cr.-Q. 13. You knew that this agent of the Iron Mountain railroad had had an opportunity in your house to take this list of the goods, didn't you? A. The freight was there; I do not know whether he was refused or not.

Cr.-Q. 14. You knew the facts then, as well as to-day, that he had the opportunity to take it? A. Yes, sir. Q. Mr. Albright knew it as well as you? A. Mr. Albright was there.

Cr.-Q. 15. Did you tell Mr. Soper, as well as Mr. Dudley or Mr. Kerens, that this agent had the opportunity to do this, and might have done it? A. No; I did not tell him anything.

Cr.-Q. 16. Did Mr. Albright tell him that?

A. I don't know whether he did or not.

Cr.-Q. 17. Did he, in so far as you heard him, speak at all about it—tell him that? A. I do not know that he did.

Cr.-Q. 18. Do not you know that he did not, so far as you heard? A. I do not know whether he did or not; I cannot say; I did not hear anything said about it at all.

Cr.-Q. 19. You did not hear him tell them, did you?

A. No; I did not.

Cr.-Q. 20. You have stated to Mr. Glover in your re-examination that the habit was, if two wagons came there, to load from either side of the car? A. Yes, sir.

Cr.-Q. 21. That is simply the case in daylight; you do not know how it is at night? A. I don't know how at night; I never went out with a run at night.

Cr.-Q. 22. You simply speak of the conduct of the business in daylight? A. Yes; but I know in other places at night we have both doors open.

Cr.-Q. 23. Where? A. At Little Rock, where we have double doors, have both doors open.

832 Cr.-Q. 24. Where else? A. That is about the only place we have to open much at night to unload or load freight.

Cr.-Q. 25. Do you know how it is in New York city? A. No.

Cr.-Q. 26. Cincinnati or Chicago? A. No.

Cr.-Q. 27. Do you how it is in Philadelphia, loading express cars at night, in reference to keeping both doors open?

A. No, sir.

Cr.-Q. 28. Now, I will get you to state if it is not an essential precaution, in a large city like St. Louis, to keep one of the express car doors closed, and especially on a dark, rainy night, when the loading is at nine or ten o'clock at night?

A. I suppose they would keep the door closed if there was nothing to come in that door; if there was anything to come in the door they would certainly open it.

Cr.-Q. 29. Who was going out that night that this man was pushed out of the car; what messenger of the company?

A. Obermeyer.

Cr.-Q. 30. Where is Obermeyer? A. In Texarkana now.

Cr.-Q. 31. Did you see the freight that was to go out?

A. Yes; I saw their wagon-load of freight.

Cr.-Q. 32. On which side of the car was it?

A. On the south side.

Cr.-Q. 33. Did you hear Mr. Dudley say to Mr. Obermeyer, whom you say you know, to come around on the north side of the car if he wanted to put his freight in?

A. No; I did not; there was no room at that door, because the Iron Mountain express department's wagon stood there fully 15 or 20 minutes, right at that door.

Cr.-Q. 34. What was it doing there? A. I do not know.

Cr.-Q. 35. Nothing, was it?

A. I suppose it wanted to keep that door blocked up.

Cr.-Q. 36. Is it not your opinion the Iron Mountain express department wanted to keep their wagon there to keep the other wagon from getting there? A. Yes.

Cr.-Q. 37. Just standing there for fun?

A. Yes; trying to block it up.

Cr.-Q. 38. That is your opinion? A. Yes, sir.

Cr.-Q. 39. You do not think the Iron Mountain had anything there at all? A. Some little freight; yes.

Cr.-Q. 40. Some little stuff; not very much?

A. No; not a great deal.

833 Cr.-Q. 41. Did you notice papers of tacks in it? A. No, sir.

Redirect examination by Mr. GLOVER:

Q. 1. Do you anything about erasures on any packages upon the slips of this freight that was going out, if it could have gone out; do you know whether there had been a list made of that identical freight?

A. That was going out that night?

Q. 2. At the time you say Mr. Dudley wanted the scrip, previous to throwing the messenger out of the car, do you know know whether there was any erasures on the list of those items that were in the sack? A. They had the sacks scripped.

Q. 3. Who scripped them?

A. The Iron Mountain scrip clerk.

Q. 4. Where?

A. At the office. They scrip the sacks before they are put into the wagons and brought over to the car.

Q. 5. He knew it; he had seen them all, and scripped them?

A. Yes.

Q. 6. Then when you got to the depot this scene of putting the messenger and the sacks out came on? A. Yes, sir.

Q. 7. It was not on account of his being a thief, or anything of the sort? A. No, sir.

Q. 8. They put the sacks out for some purpose?

A. They put the sacks out because they did not want them to go in that shape, I suppose.

Q. 9. They had already scripped them? A. Yes, sir.

Col. **Thoroughman**: What do you mean by scripping them—that he simply took a list of the bags? A. Yes, sir.

Q. 10. Not the contents? A. Yes.

By consent of parties, adjourned until to-morrow, February 1, at 9.30 o'clock.

St. Louis, *February* 1, 1881.

Parties met pursuant to adjournment.

J. J. **Ostrander**, sworn on the part of the plaintiff, testified as follows:

Direct examination by Mr. **Shepley**:

Q. 1. Where do you reside? A. In St. Louis.

Q. 2. Are you connected with any firm; and, if so, with what firm? A. Gould & Ostrander.

Q. 3. What is their business?

834 A. Dealers in pumps, gas pipe, and heavy hardware.

Q. 4. Where? A. Eighth & St. Charles.

Q. 5. In the transaction of your business have you had occasion to ship hardware and machinery to points on the line of the Iron Mountain railroad? A. Yes, sir.

Q. 6. Do you have any knowledge of any shipment made by the firm of Gould & Ostrander, in the month of September, 1880, to Little Rock? A. Yes, sir.

Q. Just state what shipment was made during that time.

A. We made several shipments to Little Rock in September.

Q. 8. Were any shipments made on or about the 14th of September to Little Rock? A. Yes, sir.

Q. 9. What shipment? Please describe it.

A. We shipped on September 14th 461 feet and 10 inches of three-inch gas pipe, 60 feet of fourteen-inch four-ply belt, to the Little Rock Oil Company.

Q. 10. What was the weight of that shipment, do you know?

A. I did not weigh that shipment; I only know from the card rate of the weight. They have printed cards which give the weight. Figuring from this, I would say the weight of the gas pipe was about 3,200 pounds; 461 feet, weighs 7 pounds to the foot, 7 and a fraction. I should think, altogether, that it probably was something over 3,200 pounds.

Q. 11. What would the belting weigh?

A. It would weigh 120 pounds; may be more.

Q. 12. Do you speak of this from the weights given upon the card rates? A. Yes, sir.

Q. 13. Have you tested the accuracy of those weights in times gone by?

A. I don't remember that I ever have. We have always understood them to be correct for gas pipe as such among manufacturers and dealers.

Q. 14. The business is carried on upon that principle and basis?
A. Yes, sir.

Q. 15. Through whom was that shipment made to this Little Rock Oil Company?

A. Our express book shows it was through the Iron Mountain Railroad Express Company.

835 Q. 16. The St. Louis, Iron Mountain & Southern express department? A. Yes, sir.

Q. 17. What did you look at and refer to just now?

A. A receipt from the Iron Mountain Express Company.

Q. 18. By whom was that receipt filled up?

A. I do not know; by one of our shipping clerks.

Q. 19. Which one, you don't know? A. No, sir.

Q. 20. How does the weight, as stated on that receipt, compare with the weights that you have given us that you judge this shipment weighed?

A. I should think it would be about correct; probably as nearly correct as we ever make any shipment.

Q. 21. It embraces the actual weights?

A. Yes; our man very likely figured that from the card rate.

Receipt book, above referred to and now produced, witness declined to leave as an exhibit, but a copy is made of the particular receipt referred to, and annexed to this deposition and marked Exhibit 32; to which defendant's counsel objected, as irrelevant and immaterial.

Q. 22. Do you know anything of what was charged by the St. Louis, Iron Mountain & Southern Railroad Company for the transportation by express of that merchandise?

A. I do not, sir.

Q. 23. Who made the contract, if you know?

A. I don't know that.

Q. 24. Who at that time would have been likely to have conducted that business?

A. Either the shipping clerk or our correspondent in the lower office, Mr. Case.

Q. 25. At the time this shipment was made did you send to the Little Rock Oil Company any letter advising them of the shipment?

Objected to, as immaterial.

A. I don't know, sir.

Q. 26. Have you made any search to ascertain whether you did send any such letter? A. No, sir.

Q. 27. Then you don't know from your own knowledge whether such a letter was sent or not? A. No, sir.

Q. 28. If such an one was sent, was it sent by one of your own firm, or clerks? A. By Mr. Case, I think.

836 Q. 29. Would it appear in your letter-press book?
A. It ought to; all letters are supposed to be copied.

Q. 30. Will you make an examination to see whether such letter exists? A. Yes; I guess so.

Q. 31. I understand, as far as your own knowledge extends, you know nothing about what the contract was?

[A.] I know nothing whatever about it.

Q. 32. I will ask you to examine your letter-book for the letter referred to, and if you find a copy of the letter called for, produce it hereafter and annex it to your testimony.

A. I will do so.

James B. Case, sworn and examined on the part of the plaintiff, testified as follows:

Direct examination by Mr. Shepley:

Q. 1. Where do you reside? A. In St. Louis.

Q. 2. What is your occupation?

A. I am at present buyer of N. O. Nelson & Co.

Q. 3. What were you doing in September, 1880?

A. I was buyer and correspondent of Gould & Ostrander, of this city.

Q. 4. Do you recollect any shipment made by Gould & Ostrander of gas pipe and belting to the Little Rock Oil Company from here to Little Rock?

A. I know we made numerous shipments to them of that kind of goods.

Q. 5. Do you recollect of any shipment made on or about the 14th of September, 1880, by express, of gas pipe and belting by the St. Louis, Iron Mountain & Southern railway express department?

A. Yes; I remember that there was a shipment made to them by express; my recollection is by the Iron Mountain Express Company, as we call it.

Q. 6. That is the express department of the St. Louis, Iron Mountain & Southern Railway Company? A. Yes, sir.

Q. 7. Who transacted that business, the getting of the transportation for that gas pipe and belting?

A. I think, if my memory serves me right, that I made the arrangement; my recollection is I sent our freight man to make some arrangement, and afterwards went myself.

Q. 8. Did you make any application to the Southern Express Company to ship those goods?

837 Objected to, as irrelevant and incompetent; any application made to the Southern Express Company is irrelevant.

A. I know I went to two different places.

Q. 9. State what places you went to, and at what times, and what was said.

A. I knew there were two express companies that went down there, and I went to those two express companies; hence my conclusion is simply that I went to the Southern Express Company and to the Iron Mountain to complete my knowledge of the shipping arrangement——

To all the statements of the witness, except his conduct of the business with the Iron Mountain Railway Company, an objection is made, as irrelevant.

Q. 10. To what company did you go first?

Same objection.

A. I cannot remember.
Q. 11. What was the object of your going to both?

Objected to, same as before.

A. Simply for the purpose of making the best rate I could.
Q. 12. Did you say to those two companies anything about the weight of the merchandise you proposed to ship?

Objected to, same as before.

A. I don't remember whether I said anything about the weight or not.
Q. 13. Why did you ultimately ship by the St. Louis, Iron Mountain & Southern express department?

Objected to, as irrelevant and incompetent.

A. Simply because, if my recollection serves me, it seemed to me the most favorable.
Q. 14. Who did you see, connected with the St. Louis, Iron Mountain & Southern, in relation to this shipment?
A. I don't know who it was that I saw; I have no acquaintance with any one in the office.
Q. 15. Did anybody furnish you with rates for shipment for the transportation in the express department of that railway company of this merchandise?

Objected to, as totally immaterial, and because the question does not challenge the attention of the witness to any person authorized to fix the rates.

A. Yes; I negotiated with some one.
838 Q. 16. Did you make any contract, written or verbal?
A. I made some arrangement with the party with whom I negotiated for the shipment of the goods.
Q. 17. Where was that party?
A. He was in the office of the express company.
Q. 18. You mean the *the* express of the St. Louis, Iron Mountain & Southern Railway Company?
A. Yes, sir.
Q. 19. What was he doing there?
A. He was sitting in a chair, all I can say, when I went in there.
Q. 20. Did he seem to be acting for the road?

Objected to, as leading and indefinite.

A. He seemed to be there for the transaction of business.

Q. 21. What was done in relation to that merchandise after you had this conversation?

A. My recollection is, it was shipped by the Iron Mountain Express Company.

Q. 22. You mean the express company of the St. Louis, Iron Mountain & Southern railway? A. Yes, sir.

Q. 23. What were the terms on which you agreed for the transportation of the merchandise by express to Little Rock by the St. Louis, Iron Mountain & Southern express department?

A. I have no accurate knowledge of the terms that were arranged for.

Q. 24. Did you, in any manner, state about that time the terms which had been agreed upon for the transportation of that property by this railroad by express, by writing or otherwise?

A. I don't remember that I made any verbal statement to any one. It is possible I may have informed the customer what the arrangement was, since it was his to pay, not ours.

Mr. THOROUGHMAN: That would be in the form of a letter addressed to him at Little Rock, if you did so?

A. Yes; if I did so, it was in the form of a letter.

Q. 25. Mr. SHEPLEY: Was anything said in that letter as to the reduction in rates?

Objected to, as leading and indefinite.

A. Well, I cannot remember now what the arrangement was that was made; hence I cannot remember what I wrote him.

839 Q. 26. Was there anything asked you by the person purporting to act for the St. Louis, Iron Mountain & Southern railway as to what the Southern Express Company had offered to take it for?

A. No, sir; I think not; I have no distinct recollection upon that point; only I know, as a matter of the general way of doing business, I would not have reported to one express company what the other proposed to carry it for

Q. 27. What was your idea in going to both express companies?

Objected to, on the ground that it had already been asked and answered.

A. Simply for the purpose of making the best rates that I could for our customer.

Q. 28. Does your memory, at the present time, serve you as to what rates were agreed upon between you and the person representing the St. Louis, Iron Mountain & Southern express department?

Objected to, on the ground it has already been asked and fully answered.

A. No, sir; I have no recollection of the details of the arrangement.

J. J. OSTRANDER (recalled) testifies as follows:

Redirect examination by Mr. SHEPLEY:

Q. 1. Have you made examination to see whether you have on your press letter-book a copy of any letters sent by you to the Little Rock Oil Company, in relation to that shipment about which you were examined?

A. Yes; I have examined the letter-book to the Little Rock Oil Company; I only found there a dispatch, a telegram; it has nothing in reference to rates; it merely says, "Shall we ship by freight or express?" That is all there is in there to the Little Rock Oil Company.

Q. 2. That is all you found, that copy of the telegram?

A. That is all there is to the Little Rock Oil Company.

Q. 3. Did you find any to a gentleman by the name of Wright? A. Yes; I found a letter to Mr. Wright.

Q. 4. Was it in reference to this shipment? A. Yes, sir.

Q. 5. What is Mr. Wright?

A. Mr. Wright is one of the officers of the Little Rock Oil Company.

840 Q. 6. Was that letter in relation to the amount that was agreed to be paid for transportation of that property?

Objected to, as irrelevant, and that the letter must be produced.

A. That letter was asking Mr. Wright what the amount of the express charges was that he paid.

Q. 7. A letter from Goulds & Ostrander, to Wright, asking him what was the amount of charges he paid? A. Yes, sir.

Q. 8. Will you produce that letter, or a copy of it, and let the notary take a copy?

(Letter produced.)

A. I tore that letter out of our copy-book.

Q. 9. Will you permit us to take that copy and annex it to your deposition? A. No.

Q. 10. Will you please read it to the notary?

Objected to, as incompetent and irrelevant.

(Witness reads:)

"ST. LOUIS, *September* 15, 1880.

"W. H. WRIGHT, Esq., *Little Rock, Ark.*

"DEAR SIR: Please let us know how much express charges you paid on the gas pipe and roll of belt. We have a confidential arrangement which we cannot use, but if you will inform us of the amount we will let you know whether it is right or not.

"Yours respectfully,

"GOULDS & OSTRANDER,
"By J. B. C."

Q. 11. Did you have any communication from Mr. Wright, in answer to that? A. I don't know, sir.

Q. 12. You stated that you had in your pocket-book a copy of a telegram; have you a copy of that? A. No, sir; I have not.

Q. 13. Do you know what the telegram contained?

A. No, sir; I don't know what it contained; I do not think it contained anything bearing directly on this matter.

Q. 14. As far as you know? A. As far as I know.

Cross-examination by Col. THOROUGHMAN:

Cr.-Q. 1. I wish to ask you one question, which is this: You are carrying on a very considerable trade with Arkansas and Texas in your business? A. Yes, sir.

Cr.-Q. 2. And have been for some years large shippers over the Iron Mountain railway, haven't you? A. Yes, sir.

841 Mr. SHEPLEY: You stated on cross-examination you were a large shipper over the St. Louis, Iron Mountain and Southern railway; did you have any accommodations by reason of that—any passes? A. Yes; I think we have some.

Q. Free passes? A. Yes, sir.

Cr.-Q. 3. By Col. THOROUGHMAN: You say you have had passes over the Iron Mountain railway; that was not for last year alone, but it has run back, has it not, for a number of years before that?

A. Well, not longer than last year and year before.

Cr.-Q. 4. I will ask you if you did not have agents, or what is commonly called drummers, out in Texas and Arkansas, and Southwest generally, soliciting business? A. Yes, sir.

Cr.-Q. 5. And for those you got passes?

A. Well, we have had some passes for them.

Cr.-Q. 6. You bought tickets in some cases for them, did you not? A. Yes, sir.

Cr.-Q. 7. Can you tell us the amount of trade that you did to the Southwest over the Iron Mountain railway during 1880, in gross thousands of dollars?

A. Well, I do not know; it might have been $150,000 to $200,000 perhaps.

Cr.-Q. 8. The effect of soliciting business for your house indirectly would be soliciting patronage for the Iron Mountain railroad, would it not, or where commerce was brought to it by reason of those agencies?

A. Of course that would be true to a certain degree as far as shipments were made in that direction.

Mr. SHEPLEY: Were those free passes that were given to you, did they extend to the present time?

A. No, sir; they were generally trip passes.

Cr.-Q. 9. Have you had any such since June, 1880?

A. Yes, I think so; I won't be certain about that.

Cr.-Q. 10. Do you know of any change of the statute in relation to those free passes since June, 1880; haven't they gone on just the same as before, as you have stated?

A. Yes, sir; I don't know that there has ever been any change at all in regard to it; we never had any understanding at all; we went there once in a while and asked Mr. Soper for passes, and he has generally given to us whenever we have asked him for them.

842 Cr.-Q. 11. You have been asked in relation to whether you haven't bought tickets for your travelers; you have bought tickets for your travelers? A. Yes.

Cr.-Q. 12. What sort of tickets were they?

A. We bought 1500-mile tickets and we have bought regular tickets.

Cr.-Q. 13. Well, for 1500-mile tickets, what rates have you been paying?

A. I don't remember exactly what rate, but it is considerably less than the regular rates.

Cr.-Q. 14. Has that continued up to the present time; has there ever been any change in relation to that?

A. Not that I know of; I haven't given it much attention, and I don't know that there has been any change at all.

Cr.-Q. 15. How many of those 1500-mile tickets have you purchased since June 8, 1880?

A. We might have had one or two only.

Redirect examination by Mr. **Shepley**:

J. B. **Case**, recalled, testified as follows:

Q. 29. Have you seen the press copy exhibited here this morning by Mr. Ostrander, addressed to Mr. Wright?

A. I saw the one you had in hand a few moments ago.

(Letter shown witness.)

A. This is it.

Q. 30. What do you know about that letter?

A. That letter, the body of it, is in the handwriting of Mr. Zane; the signature at the bottom is mine.

Q. 31. What do you know about any arrangement with the St. Louis, Iron Mountain & Southern railway in regards to rates for the transportation of property, by them referred to in that letter?

A. I do not know of any arrangement with the St. Louis, Iron Mountain & Southern Railway Company.

Q. 32. Or the express department of it?

A. I know that some arrangement was made.

Q. 33. You say that the letter is in the handwriting of Mr. Zane; who dictated the letter, if you know? A. I did.

Q. 34. What do you mean by the expression used, "We have confidential arrangements, &c.?"

Objected to, as leading and irrelevant, and on the further ground that the text of the letter shows what the meaning is.

843 A. Well, I can hardly say more than it says in the letter itself.

Q. 35. Did you know at the time you wrote the letter of any confidential arrangements having been made by the St. Louis and

Iron Mountain Railway Company's express department [illegible] der and Goulds?

A. I assume there was some confidential arrangement from the fact I dictated that letter at the time.

Q. 36. How did you come to dictate that letter?

Objected to, as irrelevant.

A. I can hardly say more than as a business courtesy I suppose due to a customer.

Q. 37. Were you speaking in dictating that letter of an arrangement that you had anything to do with?

Objected to, as leading and irrelevant.

A. I referred to an arrangement that I made for the firm for the shipment of some goods to Little Rock Oil Company.

Q. 38. What was that arrangement?

A. I don't remember what the details of the arrangement were.

Q. 39. Was not the arrangement to transport the property mentioned by the express department of the St. Louis, Iron Mountain & Southern Railroad Company at less than the regular rates?

Objected to, as leading.

A. I don't remember what the details of the arrangement were.

Q. 40. What did you mean by asking Mr. Wright to give you the amounts that were charged there by the express department of the St. Louis, Iron Mountain & Southern railway?

Objected to, as before; the letter itself explains what he meant.

A. Simply, I suppose, for the reason that if they paid more than what was agreed, that we could inform him of the fact.

Q. 41. Have you not now any recollection of how the rates, as agreed upon between you and the express department of St. Louis, Iron Mountain & Southern railway, compared with their usual and ordinary rates?

Objected to, as before.

844 A. I have no distinct recollection of what the details of the arrangement were, nor how it compared with what the advantages, if any, were.

Q. 42. Have you any distinct recollection of how they compared?

A. Well, only that the arrangement was more favorable with the Iron Mountain Express Company for some reason; I cannot state positively what that reason was.

Q. 43. How did the rates, as finally fixed on between yourself and the St. Louis, Iron Mountain and Southern railway express department, compare with the rates that you had received as the rates which the Southern Express Company was willing to carry that property?

Objected to, as the same question has been asked and answered.

A. I cannot remember what the comparative rates were.

Q. 44. You cannot remember whether they were more or less favorable than the rates as given to you by the Southern Express Company were?

A. I should say that those offered by the Iron Mountain Express was more favorable than the Southern Express Company.

Q. 45. Have you any recollection of how much more favorable? A. I have not.

Q. 46. When you spoke in that letter of an arragement, did you refer to an arrangement made with the express department of the St. Louis, Iron Mountain & Southern Railroad Company for the shipments generally of Ostrander & Goulds, or for this particular shipment?

A. I should say I referred to that particular shipment, because there is a particular shipment mentioned in the letter.

Q. 47. Do you know as a matter of fact whether there was any arrangement between the St. Louis, Iron Mountain and Southern railway in its express department with Ostrander & Goulds generally in relation to their shipments or not?

A. I have no recollection of any special arrangement for general shipments; of course we were constantly soliciting rates from not only that railway but others—special rates.

Q. 48. In shipping for Ostrander & Goulds, over the St. Louis, Iron Mountain & Southern railway by express, do you recollect any other instance in which any abatement was made by that company from its usual tariff rates?

A. I have in mind no other special shipment ever made by the express over that road.

845 Q. 21. As a general thing, have you any recollection how that was managed with reference to your recollection of any particular shipment?

A. No; that was usually left to the shipping clerk in the house.

Q. 22. Who is that clerk? A. J. C. Warren.

Cross-examination by Col. THOROUGHMAN:

Cr.-Q. 1. Mr. Case, you have been in commercial business here for some time, have you not? A. Yes, sir.

Cr.-Q. 2. How long were you with Messrs. Ostrander & Goulds? A. Well, I was with that firm, under that firm name, about 21 months.

Cr.-Q. 3. You were familiar while there, with the mode of shipment of goods, were you not, pretty generally?

A. Yes, sir.

Cr.-Q. 4. State whether 3,000 pounds and upwards of gas pipe is properly speaking, express matter at all?

A. No, sir; usually it is not.

Cr.-Q. 5. Didn't you usually, before taking the responsibility of shipping by express, telegraph to know how you must do it, or have you any recollection on the subject? Mr. Ostrander says that was done to know whether to ship by express or common freight.

A. Well, that is quite possible that was done; I know we had positive instructions to ship that lot by express.

Cr.-Q. 6. Now, you say you cannot remember any reason why this property was given to the Iron Mountain express in preference to the Southern Express; now, I will ask you to state if this is not true; was not the preference given to the Iron Mountain Railway Company, because the favors had been reciprocal—had they not given tickets at reduced rates, and in some cases, passes to your agents over the road? I wish you to state whether or not that is not the motive of sending it by the Iron Mountain railway express department—whether that is not the consideration that operated on your mind.

A. I can only repeat in substance what I have said before—that I do not remember now the exact reasons why the preference was given; the exact points or considerations or abatements, whatever they may have been, I do not remember.

Cr.-Q. 7. If any, you do not know what they were?

A. No, sir.

846 Redirect examination by Mr. **Shepley**:

Q. 1. What do you mean by the word "confidential" in the letter; what were you alluding to?

A. Well, I suppose I used that as it is used often, in a commercial way; there are a great many business transactions which are done, measurably, as matters of confidence, or at least, treated confidentially, and I assume from the letter this was one of them.

Q. 2. What was the confidence you speak of as between Ostrander & Gould and any other shipper?

A. Well, I can only answer that by saying that I would assume that there was some point or points in connection with the arrangement, which were considered confidential.

Q. 3. Considered confidential as between whom?

A. Well, as between the firm of Gould & Ostrander and the carrier.

Q. 4. You mean the St. Louis, Iron Mountain & Southern railway express department? A. Yes.

Q. 5. Did you at the time know what that confidential arrangement was? A. Yes, sir.

Q. 6. Has it, since that time, passed out of your recollection what it was? A. Yes, sir.

Signature waived.

By consent, adjourned until February 2, 1881.

St. Louis, *February* 2, 1881.

Parties met pursuant to adjournment.

M. M. **Clark**, sworn and examined on the part of the plaintiff, testified as follows:

Direct examination by Mr. **Glover**:

Q. 1. Mr. Clark, where do you reside? A. In St. Louis.

Q. 2. How long have you resided here in St. Louis?

A. I have been here since the first of August, 1880.

Q. 3. How are you employed?

A. I am auditor of the Iron Mountain express department.

Q. 4. How long have you been auditor of the Iron Mountain express department?

A. Since the middle of September, the 15th of September.

Q. 5. Does the Iron Mountain railroad issue bills of lading fo express matter shipped by them?

A. They do receipts—an ordinary express receipt.

847 Q. 6. What officer of the St. Louis, Iron Mountain an Southern express department holds those receipts; afte they are taken up? The receipts or bills of lading issued by th railroad, by its express department, for express matter shipped ove it and delivered to the shipper, and the matter received, and afterwards when the matter is delivered they are taken up; then pleas state what is done with those receipts, bills of lading as I cal them?

Objected to, as assuming what is not proven, and does not exis in point of fact.

Q. 7. What is done at the time that the shipment of goods is made through the express department of your railroad?

A. The receipt is given for it, if it is asked for; in all cases they prefer to give a receipt, I think——

Q. 8. Any other paper made by the railway through its express department? A. For the shipper?

Q. 9. Yes, for the use of the company?

A. Yes, it has a regular way-bill every trip.

Q. 10. What is done with the way-bills?

A. They accompany the goods to destination.

Q. 11. What then?

A. Those are returned to the auditor's office.

Q. 11. The way-bills for the goods issued by the express department of the Iron Mountain railway for goods received and transported by that department accompany the goods to the destination, then in the course of business are returned to the auditor? A. Yes, sir.

Q. 13. And you should have them, should you not?

A. Yes, sir.

Q. 14. Mr. Clark, I want you to search for and produce a way-bill issued by the express department of the St. Louis, Iron Mountain & Southern railway, September 14, or 15, to Gould & Ostrander for 25 pieces of pipe and one bundle of belting, more or less, weighing between two or three thousand pounds, addressed to the Little Rock Oil Company at Little Rock, Arkansas; ought not you to have that paper, if it was issued by the express department of the railroad for a shipment of that sort? A. Yes, sir.

Q. 15. Will you examine for it and produce it here, if you find it?

A. I will.

848 Q. 16. Mr. Clark, what do the way-bills, which you have

spoken of as being issued with shipments through the express department of your road, show?

Objected to, that the paper will be the best evidence of what it contains.

A. They show the articles shipped, the name of the consignor, and the consignee, and the destination, also the weight, rate, and amount of charges.

Q. 17. Can you tell me what express rate the express department of your railroad has had for express matter shipped from Texarkana through St. Louis, over the Iron Mountain railway to St. Louis, and from St. Louis to New York, can you give me the through rate on express matter?

A. I don't think I could name it without consulting the tariff or rate from Texarkana to New York.

Q. 18. Your railway express department, I assume in the question, has such regular rates of express matter shipped over it from Texarkana to St. Louis, and from St. Louis East to New York? A. Yes, sir.

Q. 19. Is that a printed table?

A. It is a printed list of officers with the tariff rate inserted with a pen and ink, I think.

Q. 20. You speak of a tariff express rate of the St. Louis & Iron Mountain railway from Texarkana through St. Louis to New York?

A. Yes, sir.

Q. 21. Have you ever seen such a document?

A. Well, we have not been billing but a short time from Texarkana to New York direct; I don't think I ever have seen the rate.

Q. 22. If there be such a rate in table form, would you have it—would it be in your office as the proper place to keep it?

A. A copy of it should be there.

Q. 23. Now, I will ask you if the express department of your railroad has such a tariff from Little Rock over the railroad to St. Louis and from St. Louis, to New York?

A. Yes, there is such a tariff.

Q. 24. Is there such a tariff, showing the rate from points between Texarkana and St. Louis, and on to New York showing rates from the different points to New York?

A. No, sir, I should say not; because only the principal offices bill through to New York.

849 Q. 25. What do you mean by principal offices?

A. I mean the larger offices; such as Little Rock and Texarkana.

Q. 26. Can you tell the through express rate over your road from Texarkana to St. Louis, and East to New York?

A. I cannot name it without referring to the tariffs.

Q. 27. Will you produce and file with your deposition the tariff from those points that I have mentioned over your road to New York? A. I have no objection to doing so.

Q. 28. When can you do it?

A. As soon as I can get the tariff.

Q. 29. Would the same tariff, express tariff rate, which shows the rates from Texarkana, and from points on the Iron Mountain railway to St. Louis and East to New York, show the express rates from New York through St. Louis, over the Iron Mountain railway, to the same points—that is, would it be the same, or is there a different rate, for goods coming West and going South, from goods coming North and going East, over the Iron Mountain railway. I mean has your express department two defferent rates, in respect of express matter, coming from points on the Iron Mountain railway to St. Louis, coming North and East to New York, and in respect of goods coming from New York to the West through St. Louis, and over your road South to those different points; are the rates for transportation different?

A. The rate should be the same, and I think it is the same.

Q. 30. But you do not positively know?

A. I cannot positively state without consulting the rate.

Q. 31. Now, can you procure those documents for me by to-morrow morning? A. Yes, sir.

Q. 32. Can you do so this evening by three o'clock?

A. I think I could; yes.

Q. 33. Now, do I understand that there are in your auditor's office all the way-bills for the express matter shipped over the Iron Mountain railroad to and from Texarkana and St. Louis and other points on the road—that you have possession of them all? A. Yes, sir.

Q. 34. Will you produce for me and annex here to your deposition the way-bills aforesaid for express matter, beginning with July 1st, 1880, and ending with July 31st, 1880, inclusive?

850 A. I will take the matter under consideration.

Q. 35. In what condition are those way-bills—are they in the condition of loose pieces of paper, or are they in bound books?

A. They are not in bound books; they are separate.

Q. 36. Have you got the originals, or impression copies of them?

A. I haven't impression copies of them; no, sir; I have the original bills, or in some cases the originals might have been lost, and we have copies of them.

Q. 37. How many do you suppose belong to each day—how many way-bills?

A. Now, let me ask another question—this is between Texarkana and St. Louis?

Q. 38. All the way-bills of the road to all points—how many of those do you think belong to each day?

A. Well, it is hard to say how many there are.

Q. 39. At what time did your express company begin work? A. The middle of June.

Q. 40. In the matter of your charges—I mean the charges of the express department of the St. Louis, Iron Mountain and Southern railway from Texarkana over your railroad to St. Louis, and from St. Louis to New York, what proportion, compared with the distance, do you receive for your share of the through rate from Texarkana, *via* St. Louis, to New York?

A. Our proportion is based upon the rate of each road.

Q. 41. Do you get your full freight and according to your tariff from Texarkana to St. Louis, or do you have a commuted rate dividing with the Eastern roads and yourself upon some agreed price, or do you take out the same amount of freight the same as any other shipment taken at Texarkana and ended at St. Louis?

A. We keep our proportion of the full rate.

Q. 42. Is that proportion according to the rate from Texarkana to St. Louis according to your tariff?

A. It amounts to the same thing.

Q. 43. Have you got a tariff rate on your express department and through rate from St. Louis to Galveston through Texarkana over your road, and from Galveston and other points North to St. Louis over your road?

851 A. We have our rate to Texarkana and the rate of the Texas Express Company to Galveston; I could arrive at the through rate in that way by having both rates.

Q. 44. Your through rate, then, from St. Louis over your road at Texarkana and on to Galveston and other points in Texas is just, if I understand it, your through rate from St. Louis to Texarkana, with the rate to the other points in Texas added?

A. Yes, sir.

Q. 45. And not a commuted through rate? A. No, sir.

At this point adjourned until to-morrow morning 10 o'clock, February 3, 1881.

St. Louis, *February* 3, 1881.

Parties met pursuant to adjournment, and the taking of testimony was resumed as follows:

Direct examination of M. M. Clark was resumed.

Q. 46. Are you ready to produce and show to the examiner the way-bill for the shipment referred to in the testimony yesterday? A. Yes, sir.

Q. 47. Let me see it if you please.

(Paper produced and handed to counsel.)

Plaintiff's counsel returns the paper to witness and asks him to state what it is. A. It is a way-bill.

Q. 48. Is it a way-bill of a shipment by Gould & Ostrander?

A. It is a way-bill; the consignor is not shown.

Q. 49. Who are the consignees?

A. The Little Rock Oil Co., of Little Rock.

Q. 50. What was consigned to them as per that way-bill?

A. Twenty-five pieces of pipe, one roll of belt.

Q. 50. Is the weight given? A. Yes, sir; 2,490 pounds.

Q. 51. What are the charges? A. The charges are $49.80.

Mr. Thoroughman: I will admit that is the Ostrander shipment referred to in the evidence of Ostrander & Case.

Counsel for Plaintiff: The way-bill referred to is in words and figures as follows, to wit:

"(65.) St. Louis, Iron Mountain & Southern Railway Company, No. 93, September 15, 1880. Express department. Yost, 1st Mess. Freight way-bill forwarded from St. Louis, Mo., to Little Rock, Ark. No. packages, 25 pieces of pipe, 1 roll of belt, L. R. Oil Co., L. R., weight 2,490 pounds. Rate per hundred pounds on freight, $2.00; our charges, $49.80; collect, $49.80."

852 It is agreed that the above can be used in place of the original.

Defendant's counsel desires that a copy of the whole way-bill be attached to this deposition, and says he will furnish a copy. (The copy is hereto attached and marked Exhibit 33.)

Q. 53. Did you bring those other things that were asked for, freight rates? A. Yes, sir.

Q. 54. From Texarkana to New York, through rates?

A. There is a list of our offices, with tariff to New York from those offices inserted.

Q. 55. What I want to know is whether you have a published rate table, express rate issued by the St. Louis, Iron Mountain & Southern Railway Co., from Texarkana to New York, Little Rock to New York, by way of St. Louis; here you have only your own scale of rates?

A. I have the rate there I use. That is the way I arrive at the rate in my office. If there is a published rate, that belongs more properly to the superintendent's department. I cannot say in what form the superintendent has his rates.

Q. 56. You can't give me a paper showing upon it the rate of the Iron Mountain express department from Texarkana, for instance through St. Louis to New York; you use your own table and add what is the current rate from St. Louis to New York? A. Yes, sir.

Q. 57. That is the way you make it up? A. Yes, sir.

Q. 58. You have no published rate for the same kind of freight from Little Rock over the St. Louis, Iron Mountain & Southern railway, by way of St. Louis, to New York, or from any other point upon your road to New York; you have no table with New York upon it?

A. I cannot say what the superintendent has.

Q. 59. You have not in your office? A. No.

Q. 60. Have you the other papers asked for?

A. I was not aware there was another paper.

Q. 61. I think there was a rate paper asked for, for freight coming over your road going West?

A. I have none; I arrive at the rates as I do with the other.

Q. 62. Have you the way-bills from July 1st to July 15th?

A. I have them in my office.

Q. 63. Have you got them here to produce?

853 A. I have not.

Q. 64. Why?

A. I did not give an answer that I would produce them; I said I would if proper to do so under direction of counsel.

Q. 65. I thought you settled the question?

Mr. Thoroughman: I saw Mr. Aikin; I told him to tell you to bring them.

A. I did not get word.

Q. 66. Up to this time you have had no advice from the attorney of the road to produce them? A. No.

Q. 67. On the contrary, you have been told to hold the matter in abeyance?

A. I have not had any instructions from attorneys.

Q. 68. Why didn't you bring them?

A. I did not answer in my testimony yesterday that I would bring them; I answered that I would take the matter under advisement.

Q. 69. And if advised by counsel to do so you would bring them? A. Yes, sir.

Q. 70. You have not been so advised? A. No.

Q. 71. The counsel you refer to was present, then—Col. Thoroughman? A. Yes, sir.

Q. 72. Have you determined now to bring them after what has been said? A. I have no objection to bring them.

Q. 73. Can you do it this morning? It is now 11 o'clock; can you have them here by 12 o'clock?

A. Yes, sir; I will bring them as soon as I can.

Q. 74. You have no other paper? A. No.

Mr. Thoroughman: Go over and get them.

(Witness retired.)

Stephen D. Barlow, sworn on the part of the plaintiff, testified as follows:

Direct examination by Mr. Glover:

Q. 1. Mr. Barlow, where do you reside? A. St. Louis.

Q. 2. How long have you resided here?

A. Forty-one years.

Q. 3. What is your employment at present?

A. At present I am acting treasurer for the Iron Mountain railroad in St. Louis.

Q. 4. How long have you been such treasurer?

854 A. About six years this time.

Q. 5. You have been connected with the road longer than that, have you not? A. Yes, sir.

Q. 6. Can you tell me how many shares of stock the St. Louis, Iron Mountain & Southern Railroad Company have issued?

A. I cannot tell you exactly without consulting the stock list; I could give you in the neighborhood.

Q. 7. Can't you give me a statement which, if it turns out to be incorrect, on your examining the stock list, which you can do in a minute or two? A. I think so.

Q. 8. If you will give Col. Thoroughman your statement showing the number of shares issued by the Iron Mountain & Southern Railroad Company, and are now outstanding, and Col. Thoroughman will bring them here, that shall be taken as your deposition, and you may go.

Mr. **Thoroughman**: I will do that.

Witness: Up to this date or the first of January?
Mr. **Glover**: Up to this date.

(Witness retires.)

Plaintiff's counsel produces and puts in evidence before the examiner a paper marked Exhibit 34, which is admitted by counsel for defendant, Col. Thoroughman, to be the complete St. Louis, Iron Mountain & Southern railway local freight tariff, taking effect January 1st, 1875, revised February 15th, 1880, to be appended as an exhibit to the deposition of Mr. Frink, it being a paper which he promised to furnish.

The witness, S. D. Barlow, returned.

Plaintiff's counsel produces and puts in evidence before the examiner a note, in the words and figures following, to wit:

"St. Louis, Iron Mountain &
"Southern Railroad Company,
"Secretary and Assistant Treasurer's Office,
"St. Louis, *February* 3, 1881.

"Messrs. Glover & Shepley.

"Gentlemen: There is outstanding this day of consolidated stock in the St. Louis, Iron Mountain & Southern Railway Co. two hundred and fourteen thousand two hundred and fifty-five 06-100 shares (214,255 06-100), par value being $21,425,506.

"Very respectfully, S. D. BARLOW, *Secretary*."

855 And it is agreed by the parties, Col. Thoroughman acting for defendant, that said note shall be taken as the sworn statement in evidence of Mr. Barlow.

The witness, M. M. Clark, not having returned with the papers he went to get, and it being after 12 o'clock, the further taking of these depositions was adjourned until 10 a. m., to-morrow, February 4, 1881.

St. Louis, *Feb.* 4, 1881.

Parties met pursuant to adjournment, and the further taking of testimony in this cause was resumed, as follows:

Direct examination of M. M. Clark resumed.

Plaintiff's counsel produces and offers in evidence the order of the circuit court of the United States of the eastern district of Missouri, in the words and figures following, to wit:

"In the United States Circuit Court, Eastern District of Missouri. At Chambers, June 1, 1880.

SOUTHERN EXPRESS COMPANY
vs.
ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO. } ss:

The motion for complainant for preliminary injunction herein, according to the prayer of the bill, having been brought up to be heard, and the parties being present, by their counsel, and the court having duly considered the questions presented after argument for defendant, as well as for plaintiff, doth hereby order that defendant, its officers, agents, servants, and employees be enjoined and restrained until the final determination of this cause from preventing plaintiff enjoying the same facilities in the conduct of its express business, permitted to any other express company, or exercised by the defendant itself on payment by plaintiff of reasonable compensation therefor."

Plaintiff's counsel also puts in evidence the copy of another order of the same court in words and figures following, to wit:

THE UNITED STATES OF AMERICA,
Eastern District of Missouri, } ss:

The Circuit Court of the United States in and for said District. At Court, Saturday, November 6th, 1880.

SOUTHERN EXPRESS COMPANY, Complainant,
vs.
ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO., Defendant. } ss:

The petition of the plaintiff for a modification of the provisional
order of injunction heretofore made, having been presented to
856 the court, together with the answer thereto and affidavits and
counter affidavits, and the respective solicitors having been
fully heard in the premises, it is ordered that *that* the provisional
injunction heretofore made in this cause be modified so that the
same may be as follows:

The defendant, its agents, employees, and servants are hereby enjoined until the final termination of this suit from preventing the plaintiff from enjoying equal facilities in the conduct of its express business with those permitted to other express companies, or exercised by the defendant itself with respect to such business on payment by the plaintiff of reasonable compensation for such services as may be rendered in this behalf by the defendant.

And it is further ordered that the defendant be enjoined from including in the term "reasonable compensation" any accessorial charges, and from making any discrimination against plaintiff for return of empty kegs or packages, and from charging plaintiff higher rates of freight than are charged against other companies, and that it exacts for services of its own express department. The said rates as to plaintiff are not to exceed those now established by the defendant for like service from other parties, or for the conduct of its own express department.

It is further ordered that defendant be enjoined from preventing the transportation of express matter by plaintiff over defendant's road, and from requiring as a pre-requisite, or condition of said transportation, the listing or disclosure by plaintiff of the contents of the packages, by plaintiff presented, to the defendant for transportation, and from preventing the messengers of plaintiff, on payment of passenger fares from like accommodations for the care and custody of plaintiff's shipments as are accorded to the messengers of other express companies, or agents, servants, or employees of defendant engaged in the like service.

Direct examination of M. M. Clark resumed:

Q. 76. Mr. Clark, have you now present before the examiner, and will you produce, the way bills of express freight over the St. Louis, Iron Mountain & Southern Railway Company, or the express department of said railway company, beginning with July 1st and ending July 15th, inclusive? A. Yes, sir.

Q. 77. Will you show them?

A. Yes, sir. (Papers produced.)

Q. 78. Let me look at them while we are waiting for Mr. Pike.

(Counsel examines papers.)

Q. 79. Upon the 13th of July, 1880, what was the rate of the Iron Mountain Railway Company's express department
857 from Little Rock to Chicago on fruits, do you recollect?

A. No, I can't answer that question without referring to our tariff; I was not here at that time.

Q. 80. I call your attention to one of the way-bills produced under date July 13th, 1880; No. 43; from Little Rock to St. Louis, with this caption: St. Louis, Iron Mountain & Southern Railway Co., express department. Freight way-bill forwarded from Little Rock, Arkansas, to St. Louis. No. packages; 10 boxes, four barrels vegetables. From whom received: W. To whom addressed: G. Lasher. Destination: Chicago, Ill. Weight, 600 pounds; rate per hundred pounds on freight, $2.00; our charge, $12.00; collect $12.00; deduct $6.00; remarks, through. Can you give the rate of the express department of your road from Little Rock to St. Louis?

A. At the present time?

Q. 81. Yes. A. One dollar and seventy-five cents.

Q. 82. How was it July 13th, 1880?

A. I cannot answer positively,

Q. 83. You cannot tell what the rate is from Little Rock to Chicago? A. No.

Q. 84. You have no table that would show it in your office?

A. No.

Q. 85. Plaintiff's attorney shows to the witness way-bill No. 43 aforesaid, dated July 13th, 1880, and calls his attention in the pencil note appended to it. Will you look at that—(paper handed to witness)—will you tell me in whose handwriting that is? A. That is written by Mr. Vary, who was formerly agent here; it is signed by him; I recognize it.

Q. 86. You recognize it as his handwriting?

A. I judge it is his handwriting, from what I have seen of it.

Mr. Glover: I offer to read that: "E. L. Spencer, auditor. It appears the United States Express Company's rate, St. Louis to Chicago, is $1,00 per hundred pounds; this was agreed, through, at $2.00. That leaves us a dollar to St. Louis. The rate on vegetables from Little Rock to St. Louis is $1.25. He probably done this to get shipment. July 19th, 1880. W. P. V."

Q. 87. You say that "W. P. V." means W. P. Vary?

A. I think it does.

Q. 88. What position did he hold?

A. He was formerly agent of the Iron Mountain express department.

858 Q. 89. Are you willing to give me this way-bill, and the accompanying note of Mr. Vary's, to be filed as an exhibit with your testimony? A. Not that original bill.

Q. 90. You prefer to keep, and will keep it, as it is your right to do. I simply want to show that you will not consent, and I return the bill. A. I will give you a copy.

Q. 91. The examiner has taken a copy.

A. I prefer to keep the bill.

Mr. Glover (to Mr. Pike, of counsel for defendant, who is here, representing the defendant at this session.): Are you willing to take the contents in this form, without having the bill go in?

Mr. Pike: Yes.

Plaintiff's counsel returns way-bill No. 43 aforesaid to the witness.

Q. 92. How much did the Iron Mountain Express Company receive on that shipment, according to the way-bill?

A. It received six dollars.

Q. 93. That is the meaning of "deduct" six dollars?

A. Yes, sir.

Q. 94. Mr. Clark, I call your attention to way-bill No. 42, of those produced by you this morning, July 12th, 1880, and read from it: No. of packages, 16 boxes peaches; from whom received, Southern Express; to whom addressed, C. Horstman; destination, St. Louis; weight, 320 pounds; rate per hundred pounds on freight, $1.00; prepaid charges, $3.20, to St. Louis. Mr. Clark, do you know what was the standard peach box about that time, July 12th, 1880—how many pounds to the box? A. No.

Q. 95. Do you know the standard measure of peaches?

A. No, I do not; to the box you mean?

Q. 96. Are they one-third bushel boxes or half bushel boxes?

A. I don't know.

Q. 97. Are you willing for me to have this paper, or do you prefer to keep it?

A. I would rather keep it.

Mr. **Glover** (to Mr. Pike): Are you willing that a copy of it shall be taken in this way?

Mr. **Pike**: Yes, sir.

(Paper returned to witness.)

Q. 98. Your answer for peaches will do for every other way-bill
about peaches; I will not trouble you about it; I will simply
859 put the way-bills in and go on. According to that way-bill
those boxes of peaches were shipped through what express
company? A. Southern Express.

Plaintiff's counsel calls the witness' attention to way-bill No. 45, July 15th, 1880, and reads from it: No. packages, six boxes peaches; from whom received, C.; to whom addressed, P. M. Keiley; destination, St. Louis; weight, 100 pounds; our charges, $1.00; collect, $1.00.

Q. 99. Plaintiff's counsel hands way-bill No. 45 to witness and asks him, according to that way-bill, by what express carrier it was shipped? A. Shipped by the Iron Mountain.

Mr. **Glover**: I will not ask you about the weight of peaches there, because you don't know.

Plaintiff's counsel calls witness' attention to way-bill No. 41, among those produced by him this morning, July 11th, 1880, and reads from it: No. packages, 14 boxes peaches; from whom received, Southern Express Company; to whom addressed, C. Horstman; destination, St. Louis; weight, 280 pounds; rate per hundred pounds on freight, a dollar; charges prepaid, $2.80; remarks, to St. L.

Q. 100. Plaintiff's counsel asks the witness by what express carrier the shipment last named was made?

A. Southern Express Company.

(Paper returned to witness.)

Q. 101. Plaintiff's counsel shows to witness way-bill No. 14, July 2, 1880, of those produced by him this morning, from Judsonia to St. Louis, and reads: No. packages, 17 boxes of peaches; where from, Judsonia; shipper, C. C. Smith; to whom addressed, Horstman; destination, St. L.; weight, 285 pounds; rate per hundred pounds on freight, a dollar; our charges, $2.85; collect, $2.85. Under same columns: One box of peaches, Judsonia; where from, Judsonia; shipper, G. W. Briggs; weight, 16 pounds; rate per hundred pounds on freight, a dollar; our charges, 15 cents; collect, 15 cents. Under the same columns: No. of packages, 99; where from, Judsonia; shipper, W. A. Bonham; to whom addressed, Gerber & S.; destination, St. L.; weight, 1,600 pounds; our charges, 16 dollars; collect, 16 dollars. Under same columns: No. packages, six boxes of peaches; where from, Judsonia; shipper, James Carney; to whom addressed, Zuck & Co.; destination, St. L.; weight, one hundred pounds; rate per one hundred pounds on freight, $1.00; collect, $1.00. By what express carrier was that shipment in the way-bill?

A. By the Iron Mountain Express.

860 Q. 102. Plaintiff's counsel produces the [illegible] July 12th, 1880, of those produced by him this morning, and reads: No. of packages, six boxes of peaches; from whom received, Darle; to whom addressed, P. M. Keiley; weight, 100 pounds; our charges, a dollar; collect, a dollar; remarks, A—and asks witness by what express company those six boxes of peaches were shipped, according to the way-bill?

A. By the Iron Mountain Express.

Q. 103. You prefer to keep all these way-bills?

A. Yes, sir.

Mr. **Glover**: You don't mean to surrender any of them, as I understand.

Plaintiff's counsel shows witness the way-bill No. 26, July 12th, 1880, of those produced by him this morning, and reads from it, as follows: No. of packages, 1 crib; from whom received, Frank; to whom addressed, W. E. Weyle; destination, Summit; weight, 100 pounds; the rate per hundred pounds on freight, 60 cents; our charge, 60 cents; collect, 60 cents; together with same package, two chairs attached, and one buggy; the chairs attached are addressed to Tiernan.

Q. 104. Plaintiff's counsel shows the way-bill No. 26 aforesaid to witness, and asks him by what express company that shipment was made over the road to Summit?

A. Made by the Iron Mountain Express.

Q. 105. Can you tell me what is the rate of your express department upon that character of freight; is it one and a half rate or two rates?

A. One and half rate; I am not sure; I am not quite positive.

Q. 106. According to your tariff?

A. My recollection of the tariff is that it is one and a half rate.

Q. 107. What is this? A. Sixty cents.

Q. 108. Is that one rate, or one and a half rate?

A. I do not know what the rate was at that time—whether that was the regular rate, or one and a half rates.

Q. 109. Are you willing that I should keep the bill?

A. No.

Q. 110. Plaintiff's counsel calls the attention of the witness to way-bill No. 38, from St. Louis to Little Rock, July 8th, 1880, of those produced by him this morning, and reads from it as follows:
"No. of packages, one package; from whom received, Pacific
861 Express; to whom addressed, W. D. Adams; weight, 2
pounds; charges advanced, 12 cents; our charges, 13 cents;
collect, 25 cents;" and asks witness by what express carrier that was shipped.

A. The Iron Mountain Express.

Q. 111. What is the regular rate upon two-pound packages from St. Louis to Little Rock, Arkansas?

A. I cannot tell, without referring to our classification.

Q. 112. Can you tell by that? (Card shown to witness.)

A. Twenty-five cents.

Q. 113. How much did you get upon that?

A. Thirteen cents.

Q. 114. Are you willing for me to keep that? A. No.

Q. 115. What is that, No. 38? A. Yes.

Q. 116. Are there two numbered 38?

A. Yes. What is the date?

Q. 117. July 8. A. Yes, sir.

Q. 118. Plaintiff's counsel produces and shows to the witness another way-bill, No. 38, July 8th, 1880, of the way-bills produced by him this morning, from St. Louis to Little Rock, Arkansas, and reads from it as follows: "No. of packages, 1 package; from whom received, Pacific Express; to whom addressed, J. D. Ralls; destination, Russeleville, Arkansas; weight, two pounds; charges advanced, 12 cents; our charges, 13 cents; collect, 25 cents." Also under the same headings: "No. of packages, 1 truss; from whom received, Pacific Express; to whom addressed, Mrs. Schender; destination, Prairie View, Arkansas; weight, 5 pounds; charges advanced, 35 cents; our charges, 35 cents; collect, 70 cents;" and asks the witness by what express carrier the shipment in the way-bill last read was made. A. By the Iron Mountain Express.

Q. 119. What is the regular rate upon that shipment, a two-pound package and a five-pound package—or a two-pound package first, from St. Louis to Little Rock?

A Twenty-five cents.

Q. 120. How much did you get? A. Thirteen cents.

Q. 121. Upon a five-pound package truss, how much was the regular rate from St. Louis to Little Rock?

A. Forty cents.

Q. 122. How much did you receive there?

A. Thirty-five cents.

Q. 123. Why did you say collect 70 cents?

A. We advanced 35 cents on the shipment.

862 Q. 124. Were you charged for that?

A. No; the Iron Mountain Express received 35 cents; we paid 35 cents to a connecting line.

Mr. Pike: You advanced that? A. Yes, sir.

Mr Glover: And collected 35 cents for the Iron Mountain road?

Plaintiff's counsel produces and shows to the witness way-bill No. 39, July 9, 1880, of the way-bills produced by him this morning, and reads from it as follows: "No. of packages, 1 package; from whom received, O. & M.; to whom addressed, L. C. Oberon; destination, Van Buren; weight, four pounds; advances, 15 cents; our charges, 15 cents; collect, 30 cents;" it is a way-bill from St. Louis, Mo., to Little Rock, Arkansas.

Q. 125. Plaintiff's counsel asks witness through what express carrier that shipment was made.

A. The Iron Mountain Express.

Q. 126. July 9th, 1880, what was the regular charge upon package of four pounds from St. Louis, Mo., to Little Rock, Ark.? A. Thirty-five cents.

Q. 127. How much did you get? A. Fifteen cents.

Q. 128. May I keep that paper? A. No.

Mr. Glover: It is agreed that as to all these papers the witness desires to retain them, and Mr. Pike makes no objections to the copy, as taken by the notary.

Q. 129. Plaintiff's counsel produces and shows to Mr. Clark, the witness, way-bill No. 37, July 12th, 1880, being one of those produced by him this morning, and reads from it as follows, it being a way-bill from St. Louis, Mo., to De Soto, Mo.: "No. of packages, one package papers; to whom addressed, P. H. Mulligan; destination, De Soto, Mo.; weight, ten pounds; rate per hundred pounds on freight, special; our charges, fifteen cents; collect, fifteen cents;" and asks by what express carrier that shipment was made.

A. By the Iron Mountain.

Q. 130. What was your regular charge from St. Louis, Mo., to De Soto, Mo., on a ten-pound package at that time, July 12th, 1880?

A. I don't know what the rate was to De Soto at that time.

Q. 131. How much did you receive on that shipment?

A. Fifteen cents.

Q. 132. How much is the rate now, from here to De Soto, on a ten-pound package? A. I think it is 40 cents.

863 Q. 133. Does the Iron Mountain railroad express department carry a package of 10 pounds any distance for less than 25 cents—has it ever?

A. According to this classification it never did.

Q. 134. You received on that 15 cents?

A. Yes, sir. (Witness retains the way-bill, preferring to keep it.)

Q. 135. Plaintiff's counsel produces and shows to witness way-bill 32, July 6th, 1880, of those produced by him this morning, of a shipment from St. Louis, Mo., to Malvern, Arkansas, and reads from it as follows: "No. of packages, 1 box of meat; from whom received, J.; to whom addressed, S. H. Stitt; destination, Hot Springs; weight, 310 pounds; rate per hundred pounds on freight, $1.50; our charges, $4.45; collect, $4.45;" and asks of witness by what express carrier that shipment was made. A. By the Iron Mountain Express.

Q. 136. Do you know what the express rate of the Iron Mountain express department was upon the shipment of meat, a box of meat from St. Louis to Malvern, July 6th, 1880?

A. No, I cannot say.

Q. 137. State what rate is charged according to that way-bill. A. A dollar and a half is the rate charged.

Q. 138. A dollar and a half a hundred according to that. You don't know what was the charge, in fact, at that time?

A. No.

Q. 139. Plaintiff's counsel produces and shows to witness way-bill No. 29, July 2nd, 1880, of those produced by him this morning, the way-bill of a shipment from St. Louis, Mo., to Malvern, Arkansas, and reads from it as follows: "No. of packages, 1 box of meat; to whom addressed, S. H. Stitt & Co.; destination, Hot Springs; weight, 315 pounds; rate per hundred pounds on freight, $1.50; our charges, $4.70; collect, $4.70." Please state by what express carrier that shipment was made? A. By the Iron Mountain.

Q. 140. What is the charge there upon a box of meat from St. Louis to Malvern per hundred pounds?

A. One dollar and fifty cents.

Q. 141. Plaintiff's counsel produces and shows to witness way-bill No. 31, July 5th, 1880, of those produced by him this morning, being a way-bill from St. Louis, Mo., to Malvern, Ark., and reads from it as follows: "No. of packages, one box of meat; from whom received, Y.; to whom addressed, S. H. Stitt; destination,
864 Hot Springs; weight, 306 pounds; rate per hundred pounds
on freight, $1.50; our charges, $4.60; collect, $4.60." What express carrier shipped that?

A. The Iron Mountain.

Q. 142. Do you know whether those charges for meat, $1.50 per hundred, from St. Louis to Malvern, were the usual rates at that time, or do you know anything about it?

A. I can't say positively.

Q. 143. Plaintiff's counsel produces and shows to witness way-bill No. 39, July 14th, 1880, of those produced by him this morning, being a way-bill of freight, from St. Louis, Mo., to Malvern, Ark., and reads from it as follows: "No. of packages, one box of meat; to whom addressed, S. H. Stitt & Co.; destination, Hot Springs, Ark.; weight, 287 pounds; rate per hundred pounds on freight, $2.25; prepaid charges; $6.45; Southern Express Company, freight ahead, July 14th, 1880." Under the same columns: "No. packages, one box of meat; to whom addressed, J. J. Bun; destination, Hot Springs; weight, 567 pounds; rate per hundred pounds on freight, $2.25; prepaid charges, $12.75; Southern Express Company, freight ahead, July 14th, 1880." Under the same columns: "No. of packages, one barrel of fish; to whom addressed, Farquhausen; destination, Hot Springs; weight, 140 pounds; rate per hundred pounds on freight, $2.25; prepaid charges, $3.15; Southern Express Company, freight ahead, July 14th, 1880." According to that way-bill, by what carrier was that shipped over the Iron Mountain road? A. Southern Express.

Q. 144. I see upon this way-bill these words: "Southern Express Company, freight ahead, July 14th, 1880." What is the meaning of that?

A. It means it was shipped by the Southern Express.

Q. 145. What is the meaning of the word "ahead"?

A. The freight had gone before the way-bill was made.

Q. 146. Is that the ordinary entry for express matter received by the Iron Mountain road from the Southern Express, "Southern Express Co., ahead, July 14th, 1880"?

A. Yes, sir.

Q. 147. Do you know, Mr. Clark, July 14th, 1880, what was the regular charge of the Iron Mountain Railroad Company for carrying a box of meat, whether it was $1.50 a hundred or $2.00 a hundred, from St. Louis to Malvern?

A. No, I can't say positively.

Q. 148. Can you tell why, in some instance which we have seen, the charge is $1.50 per hundred pounds on a box of meat
865 from St. Louis to Malvern, and in case of these three shipments it is $2.25 a hundred pounds? A. No.

(Papers returned to witness.)

Q. 149. Plaintiff's counsel calls the attention of Mr. Clark, the witness on the stand, to way-bill No. 38, July 13th, 1880, of a shipment from St. Louis to Malvern, Arkansas, being one of those produced by Mr. Clark this morning, and reads from it as follows: "No. of packages, 1 box of meat; to whom addressed, H. C. Farquhausen; destination, Hot Springs, Ark.; weight, 460 pounds; rate per hundred pounds on freight, $2.25; prepaid charges, $10.35; Southern Express Co., freight ahead, July 13th, 1880." You can no more account for the difference in that than you can for the others? A. No, sir.

Plaintiff's counsel produces way-bill No. 37, July 12th, 1880, of a shipment from St. Louis to Malvern, being one of the way-bills produced by the witness this morning, and reads from it as follows: "No. of packages, 1 box of meat; to whom addressed, S. H. Stitt & Co.; destination, Hot Springs, Ark.; weight, 317 pounds; rate per hundred pounds on freight, $2.25; prepaid charges, $7.15; Southern Express Company, freight ahead, July 12th, 1880."

Q. 150. Counsel for plaintiff reads on the same columns: "No. of packages, 1 box of fish; to whom addressed, J. J. Bourne; destination, Hot Springs, Ark.; weight, 140 pounds; rate per hundred pounds on freight, $2.25; prepaid charges, $3.15; Southern Express Company, freight ahead, July 12th, 1880."

Counsel for plaintiff also reads under same columns: "No. of packages, 1 box of meat; to whom addressed, J. J. Bourne; destination, Hot Springs, Ark.; weight, 525 pounds; rate per hundred pounds of freight, $2.25; prepaid charges, $11.80; Southern Express Company, freight ahead, July 12th, 1880;" and asks the witness by what carrier that shipment was made. A. Southern Express Company.

Q. 151. Can you state to the examiner, Mr. Clark, whether that $2.25 was the regular charge made by the express department of the Iron Mountain railroad to other customers than the Southern Express Company, and whether it was no overcharge on goods shipped by the Southern Express Company? A. I do not know what the rate was then.

Q. 152. Plaintiff's counsel produces and shows to witness way-bill 44, July 15th, 1880, of a shipment from St. Louis, Mo., to De Soto, Mo., of those produced by him this morning, and reads from it as follows: "No. of packages, 10 quarter kegs beer and two
866 boxes of show cards; to whom addressed, J. Monroe; destination, Bailey's, Mo.; weight, 1,000 pounds; rate per hun-

dred pounds on freight (blank); our charges, $3.00; collect, $3.00;" and asks witness to state by what express carrier that shipment from St. Louis to De Soto was made. A. By the Iron Mountain.

Q. 153. Do you know what is the standard weight of a quarter keg of beer, at the rate of weight it is accepted by merchants; ten quarter kegs of beer?

A. I think it is one hundred pounds.

Q. 154. You think a quarter keg of beer is one hundred pounds? A. Yes, sir.

Q. 155. Will you look at this entry, "ten quarter kegs beer, two boxes show cards," and state whether they are one shipment, in respect to the 1,000 pound weight, and of the $3.00, under the column, "Our charges"?

A. I should say they were.

Q. 156. All included in the 1000 pounds weight?

A. Included as one shipment there.

Q. 157. Of a thousand pounds? A. Yes, sir.

Q. 158. And the $3.00 pays for the whole?

A. That is all that was collected on it.

Q. 159. Plaintiff's counsel produces and shows to witness way-bill No. 3, July 3rd, 1880, of a shipment from Carondelet to De Soto, of those produced by him this morning, and reads as follows: "No. of packages, 2 kegs of beer; where from, Carondelet; shipper (blank); to whom addressed, J. Barr; destination, Crystal; weight, 100 pounds; rate per hundred pounds on freight, 35 cents; our charges, 35 cents; collect, 35 cents." Counsel for plaintiff also reads under the same columns on the same way-bill: "No. of packages, 10 kegs of beer; shipper (blank); to whom addressed, Mastertay; destination, De Soto; weight, 900 pounds; rate per hundred pounds on freight, 30 cents; our charges, $2.70; collect, $2.70;" and asks witness to state by what express carrier that shipment was made. A. Iron Mountain.

(Paper returned to witness.)

Q. 160. Plaintiff's counsel produces and shows to witness way-bill 39, July 14th, 1880, of a shipment from St. Louis, Mo., to De Soto, Mo., being one of the way-bills produced by witness this morning, and reads from it as follows: "No. of packages, 5 quarter kegs of beer; to whom addressed, A. Minor; destination, De Soto, Mo.; weight, 500 pounds; rate per hundred pounds on freight, at 30 cents; charges prepaid, $1.50; Southern Express Co., freight
867 ahead, July 13th, 1880;" and reads under the same columns:
"No. of packages, 4 quarter kegs of beer; to whom addressed, H. H. Hoffman; destination, De Soto, Mo.; weight, 400 pounds; rate per hundred pounds on freight, 30 cents; prepaid charges, $1.20; Southern Express Co., freight ahead, July 13th, 1880;" and asks the witness to state by what express carrier this was forwarded.

A. Southern Express Company.

(Paper returned to witness.)

Q. 161. Plaintiff's counsel shows to witness, Mr. Clark, way-bill

No. [illegible] July 3rd, 1880, from Charleston, Mo., to Dexter, [illegible] one of the way-bills produced by him this morning, [illegible] it as follows: "No. of packages, 1 package of cards, 2 cents; from whom received, G. W. K.; to whom addressed, S. J. [illegible]; destination, Dexter; weight, 2 pounds; rate per hundred pounds on freight, 8. (special); charges advanced, 50 cents; our charges, 15 cents; collect, 65 cents;" and showing this way-bill No. 31 to Mr. Clark, asks him by what express carrier that shipment was made.

A. Iron Mountain Express.

Q. 162. July 3rd, 1880, what was the rate on a two pound package from Charleston to Dexter?

A. I don't know what the rate was then from Charleston.

Q. 163. Do you know what the least charge of the express department of the St. Louis, Iron Mountain railway ever makes upon a package of that sort, that distance, from Charleston to Dexter; has it ever been less than 25 cents?

A. I think not.

Q. 164. Can you account for this charge of 15 cents, how it happened?

A. No, sir; I don't know why that charge was made.

Q. 165. You don't know it could be so small as 15 cents?

A. No, sir.

Q. 166. It can be in many ways, but according to the rate?

A. Yes, sir.

Q. 167. Can you say the rate was always as high as 25 cents for that service?

A. My answer was, I didn't know what the rate was at that time.

Q. 168. I ask you whether it was ever under 25 cents?

A. I think it was not.

Q. 169. Have you the rate before you?

A. No; I have not the rate at that time from Charleston to Dexter.

868 Q. 170. I show you way-bill No. 34, July 6th, 1880, from Fredericktown, Mo., to St. Louis, Mo., being one of those produced by you this morning, and read from it as follows: "No. of packages, 4 mt kegs; to whom addressed, E. Anheuser & Co.; destination, St. Louis; weight, 144 pounds; rate per hundred pounds on freight, 70 cents; special, beer; prepaid charges, a dollar; Southern Express, freight ahead, July 5, 8.50 a. m.;" and asks by what express carrier that shipment from Fredericktown to St. Louis was made?

A. By the Southern Express Company.

Q. 171. What does "mt" stand for; empty? A. Yes, sir.

Q. 172. Do you know whether the Iron Mountain railroad charges its customers other than the Southern Express Company for the return of empty kegs?

A. I cannot say what they did at that time.

Q. 173. What do they do now?

A. Charge the same to all parties.

Q. 174. For the return of empty kegs? A. Yes, sir.

Q. 175. Plaintiff's counsel produces and shows to the witness way-bill 85, July 7th, 1880, being a way-bill from Fredericktown, Mo., to St. Louis, Mo., being one of those produced by him this morning, and reads from it as follows: "No. of packages, 4 empty kegs; to whom addressed, E. Anheuser & Co.; destination, St. Louis; weight, 180 pounds; rate per hundred pounds on freight, 70 cents; special, beer rate; prepaid charges, $1.25; Southern Express, freight ahead, July 7th, 8.50 a. m.;" and asks by what express carrier that shipment was made?

A. Southern Express Company. (Paper returned to witness.)

Q. 176. Plaintiff's counsel produces and shows to witness way-bill No. 44, July 14th, 1880, being a freight way-bill from Malvern, Ark., to St. Louis, Mo., and being one of those produced by him this morning, and reads from it as follows: "No. of packages, one empty chest; from whom received, Southern Express Company; to whom addressed, St. L. B. C. Co.; destination, St. Louis; weight, 225 pounds; rate per hundred pounds on freight, $1.50; prepaid charges, $3.40;" and asks witness by what express carrier that shipment was made? A. Southern Express Company.

Q. 177. Plaintiff's counsel produces and shows to the witness way-bill
No. 31, July 9th, 1880, being a freight way-bill from Columbus,
Ky., to St. Louis, Mo., and one of those produced by him this morning,
and read from it as follows: "No. of packages, one empty box;
from whom received, Grenada; to whom addressed, Beef C. Co.; destination,
St. Louis; weight, 66 pounds; charges prepaid, 90 cents;"
and reads under the same columns: "No. of packages, one
869 empty box; from whom received, Memphis; to whom addressed,
Beef C. Co.; destination, St. Louis; rate, 64 pounds;
prepaid charges, 80 cents;" and reads under the same columns from
the same way-bill: "No. of packages, two empty kegs; from whom
received, Columbus, Miss.; to whom addressed, Joe Schnaider; destination,
St. Louis, Mo.; weight, 80 pounds; prepaid charges, $1.00;"
and asks witness what express carrier shipped that freight over the
Iron Mountain road?

A. The Southern Express Company.

Q. 178. Plaintiff's counsel produces and shows to the witness way-bill No. 43, July 13, 1880, from Malvern, Ark., to St. Louis, Mo., being one of those produced by him this morning, and reads from it as follows: "No. of packages, 1 empty chest; from whom received, Southern Express Company; to whom addressed, Haggerty & Son; destination, St. Louis; weight, 225 pounds; rate per hundred pounds on freight, $1.50; prepaid charges, $3.40;" and reads from same colums: "No. of packages, 1 empty chest; from whom received, Southern Express Company; to whom addressed, H. Cohler; destination, St. Louis; weight, 100 pounds; rate per one hundred pounds on freight, $1.50; prepaid charges, $1.50; and asks witness from what express carrier that shipment was received, to b carried over the Iron Mountain railroad?

A. The Southern Express.

Q. 179. Plaintiff's counsel produces and shows to witness way-bill No. 39, July 9, 1880, being a shipment from Malvern, Ark., St. Louis, No., and one of those produced by him this morning, an reads from it as follows: "No. of packages, 1 empty [illegible]; from whom received, Southern Express Company; to whom addressed, [illegible] Cohler; destination, St. Louis; weight, 100 pounds; rate per hundred pounds on freight, $1.50; prepaid charges, $1.50;" and asks witness from what express company that was received for carriage?

A. The Southern Express Company.

Q. 180. Plaintiff's counsel produced and showed to the witness way-bill No. 25, July 3, 1880, of a shipment from Columbus, Ky., to St. Louis, Mo., and being one of those produced by him this morning, and reads from it as follows: "No. of packages, 1 keg, empty; from whom received, Columbus, Miss.; to whom addressed, Joe Schnaider; destination, St. Louis; weight, 36 pounds; prepaid charges, 50 cents." By that way-bill, who made that shipment over the Iron Mountain road?

A. The Southern Express Company.

Q. 181. The plaintiff's counsel produces and shows to the witness way-bill No. 38, July 8th, 1880, being a freight way-bill from 870 Malvern, Arkansas, to St. Louis, Mo., and one of those produced by witness this morning, and reads from it as follows: No. of packages, 1 empty meat chest; from whom received, Southern Express Company; to whom addressed, Haggerty & Son; destination, St. Louis; weight, 255 pounds; rate per hundred pounds on freight, $1.50; prepaid charges, $3.85;" and asks witness, according to that way-bill, who shipped that freight over the Iron Mountain railroad?

A. The Southern Express Company.

Q. 182. Plaintiff's counsel produces and shows to the witness way-bill No. 36, July 7th, 1880, being a freight way-bill from Malvern, Arkansas, to St. Louis, Mo., and one of those produced by him this morning, and reads as follows: No. of packages, 1 empty chest; from whom received, Southern Express Company; to whom addressed, J. Haggerty & Son; destination, St. Louis; weight, 225 pounds; rate per hundred pounds on freight, $2.25; prepaid charges, $3.40;" and asks witness what express carrier shipped that over his road?

A. The Southern Express Company.

Q. 183. Plaintiff's counsel produces and shows to the witness way-bill No. 31, July 1st, 1880, being a way-bill from Malvern, Arkansas, to St. Louis, Mo., and being one of those produced by him this morning, and reads from it as follows: "No. of packages, 1 empty meat chest; from whom received, Southern Express Company; to whom addressed, St. L. B. C. Co.; destination, St. Louis; weight, 255 pounds; rate per hundred pounds on freight, $1.50; beef rate; prepaid charges, $3.85 to St. Louis;" and asks the witness who made that shipment over the Iron Mountain road?

A. The Southern Express Company.

Q. 184. I will ask you whether that $1.50 was the regular rate put by your railway express department in its published tariff for carrying beef; whether "beef rate" don't mean that is the regular charge on the published tariff rate?

A. I suppose that is because it was the beef rate.

Q. 185. You cannot explain it any more than appears there?

A. Nothing more than that.

Q. 186. Plaintiff's counsel produces and shows to witness way-bill No. 40, July 10, 1880, being a way-bill from Malvern, Arkansas, to St. Louis, Mo., and one of the way-bills produced by him this morning, and reads from it as follows: "No. of packages, 1 empty chest; from whom received, Southern Express Company; to whom addressed, St. L. B. C. Co.; destination, St. Louis; weight, 210 pounds; rate per hundred pounds on freight, $1.50; prepaid charges, $3.15; carried by So. Express Co., July 10th;" and asks witness who, according to that way-bill, shipped that freight over the Iron Mountain railroad?

871 A. The Southern Express Company.

Q. 187. Plaintiff's counsel produces and shows to witness way-bill No. 41, July 11th, 1880, from Malvern, Arkansas, to St. Louis, and being one of the way-bills produced by him this morning, and reads from it as follows: "No. of packages, 1 empty chest; from whom received, Southern Express Company; to whom addressed, J. Haggerty & Son; destination, St. Louis; weight, 225 pounds; rate per hundred pounds on freight, $1.50; prepaid charges, $3.40." Plaintiff's counsel also reads, under the same heading: "No. of packages, 1 empty chest; from whom received, Southern Express Company; to whom addressed, H. Cohler; destination, St. Louis; weight, 94 pounds; rate per hundred pounds, $1.50; prepaid charges, $1.50;" and asks witness who made that shipment over the St. Louis, Iron Mountain railway?

A. The Southern Express Company.

Q. 188. Plaintiff's counsel produces and shows to the witness way-bill No. 33, July 3, 1880, being a way-bill of freight forwarded from Little Rock, Arkansas, to St. Louis, Mo., and one of the way-bills produced by him this morning, and reads from it as follows: "No. of packages, 1 E. C.; from whom received, J.; to whom addressed, W. L. Holcomb; destination, Austin; collect, d.h." Mr. Clark, who shipped that freight over your express department?

A. That was shipped by the Iron Mountain express department.

Q. 189. What is the meaning of the letters E. C.; don't it mean empty kegs? A. I don't know what it means.

Q. 190. What does d. h. mean under collect?

A. It means dead head in that case.

Q. 191. Does it mean free? A. Yes, sir, free.

Q. 192. Will you allow me to keep that paper?

A. No. (Paper returned to witness.)

Q. 193. I call your attention to way-bill No. 37, July 7th, 1880, being a freight way-bill from Little Rock, Arkansas, to St. Louis, Mo., and one of those produced by you this morning, and read from it as follows: "No. of packages, 2 E. case; from whom received, C.; to whom addressed, W. L. Holcomb; rate (blank) under the heading; our charges, ret'd free." Will you tell what 2 E. C. in that? A. I don't know.

Q. 194. Now, will you tell me what "ret'd free" means?

A. In that case it means returned free.

Q. 195. Who made the shipment over the [illegible]

A. That was shipped by the Iron Mountain express department.

872 Q. 196. I will ask you whether or not the letter "E. C." there, or "E. case," do not indicate empty case. Have you not so understood it in your own line of duty?

A. I should think that was what it meant.

Q. 197. You don't hold anybody to account as auditor on a way-bill of that sort, when it appears it is marked "E. C." or "case free," there is nothing to be accounted for on that, is there? A. No, sir.

Q. 198. Now, Mr. Clark, I show you way-bill No. 32, July 2nd, 1880, being a freight way-bill forwarded from Little Rock, Arkansas, to St. Louis, and one of those produced by you this morning, and read from it as follows: No. of packages, 1 egg case emp.; to whom addressed, Cobb & Son; destination, Beebe; weight, emp.;" under the heading "prepaid charges," word "free;" who made that shipment, Mr. Clark?

A. The Southern Express Company.

Q. 199. What is the meaning of the words "1 egg case, emp."?

A. Empty.

Q. 200. What is the meaning of the word "free" under the heading prepaid charges? A. It means free.

Q. 201. It means nothing was charged by the company for the return of the empty case? A. No, sir.

Q. 202. I show you and call your attention to way-bill No. 40, July 15, 1880, being freight-bill from St. Louis to Walnut Ridge, and one of those produced by you this morning, and read from it as follows: No. of packages, 1 package; to whom addressed, Z. E. Menton & Son; destination, W. Ridge; weight, 3 pounds; rate per hundred pounds on freight, $1.50; prepaid charges, 25 cents." I also read under the same columns: "No. of packages, 1 package; to whom addressed, Z. E. Menton & Son; destination, W. Ridge; weight, 5 pounds; rate per hundred pounds on freight, 15 cents; prepaid charges, 35 cents;" state by whom that shipment was made?

A. The Southern Express Company.

Q. 203. You will observe these two first charges of packages forwarded to Z. E. Menton & Son, Walnut Ridge, one 3 pounds and the other 5 pounds, are charged for separately to the Southern Express Company? A. I see that they are.

Q. 204. Is that the regular way of doing business with respect to your own customers, other than the Southern Express Company, making two packages in that way, in that case, going to the same person and the same destination?

A. If they are from different shippers they are billed separately.

873 Q. 205. Isn't that from the Southern Express Company?

A. Yes, sir.

Q. 206. In that case, both coming from the Southern Express Company at the same time, and for the same person, is it according to the regular rules of your dealings with other persons to make two packages of it and charge them separately?

A. No, sir.

Q. 207. Then that was a departure from your regular rule, was it? A. Yes, sir.

Q. 208. I read from the same paper, way-bill No. 40, two other shipments under the same headings: "No. of packages, 1 package; to whom addressed, H. Boas; destination, W. Ridge; weight, 2 pounds; rate per hundred pounds on freight, $1.50; charges prepaid, 25 cents." Under the same columns another package addressed to H. Boas; destination, W. Ridge; weight, 1 pound; rate per hundred pounds on freight, $1.50 per hundred; prepaid charges, 15 cents.

I ask you to observe that there are two packages there received from the Southern Express Company, both for Mr. Boas, both destined for Walnut Ridge, and I ask you if it is according to the ordinary course of things to make two charges of that? A. No, sir.

Q. 209. Plaintiff's counsel produces and shows to witness, Mr. Clark, way-bill No. 45, July 15th, 1880, being a shipment from Little Rock, Arkansas, to St. Louis, and one of those produced by him this morning, and reads from it as follows: "No. of packages, 3 S. Mach. (sewing machines); from whom received, R. Chipman; to whom addressed, J. K. Sheffy; destination, Austin; weight, 300 pounds; rate per hundred pounds on freight, 35 cents; our charges, $1.05; collect 1.05;" and asks witness, according to that way-bill, what express carrier shipped that? A. Iron Mountain Express.

Q. 210. Plaintiff's counsel produces and shows to the witness way-bill No. 37, July 12th, 1880, a shipment from St. Louis, Mo., to Little Rock, Arkansas, being one of those produced by him this morning, and reads under the heading: "No. of packages, 1 swing; from whom received, G.; to whom addressed, R. L. Cobb; destination, Little Rock; weight, 8 pounds; rate per hundred pounds on freight, two dollars; our charges, 25 cents; collect 25 cents;" and asks the witness to state by what express carrier that shipment was made of that swing. A. By the Iron Mountain Express.

Q. 211. What is the regular tariff, or was July 12th, 1880, upon eight pounds, to Little Rock, from St. Louis, 50 cents?

A. Fifty cents.

874 Q. 212. Why was that charged, 25 cents, to that customer, do you know? A. I do not.

Q. 213. Mr. Clark, when your department, the express department of the St. Louis, Iron Mountain & Southern Railway Company, sends express matter to Hot Springs, by what route do you go? To what point, on your road, do you carry freight, and then leave the Iron Mountain road for Hot Springs? A. Malvern.

Q. 214. You ship to Malvern, and from there to Hot Springs? A. Yes, sir.

Q. 215. What are your rates per hundred pounds for carrying oysters from St. Louis to Hot Springs?

A. I can't tell the tariff, without referring to it.

Q. 216. I wish you would refer, and see if you can't tell us what is your regular rate—your regular charge from St. Louis to Hot Springs, over the Iron Mountain road, turning off from the Iron Mountain road, to go to Hot Springs, at Malvern?

A. I can't do it, here.

Q. 217. Do you know whether your charge to Malvern isn't $1.50? Can't you tell, on that table there, what your rate is to Malvern? A. No, sir.

Q. 218. I would like you to write a little note, and I will send a messenger over to get the rate of your office, express department? A. Well, sir.

Q. 219. Mr. Glover: I mean what you collect; your charge to Malvern is $2.25; but if you add that tariff it wouldn't show what you collect. Can you tell from the way-bills in your office how much rate is now collected for oysters per hundred pounds?

A. Yes, sir; I can tell by the way-bills there; by the tariff. That is what you want me to get; from St. Louis to Malvern or Hot Springs?

Q. 220. I thought you understood me. I want to obtain not the published rate but the amount you collect. We hold there is a difference between the published rate, $2.25, and the practice of your express department; that it sends to Malvern at one dollar and fifty cents; that you really charge us, according to your rate, $2.25, and you charge others $1.50. I want to know what you practically charge, and whether you cannot tell that from the way-bills in your office? A. Yes, sir; I can tell.

Q. 221. If you can ascertain that I wont ask you another
875 question; bring us a way-bill showing the sum you have actually collected—a way-bill in which you charge the Southern Express Co., and a way-bill in which you charge other customers.

A. At present?

Q. 222. Yes. A. Yes, sir.

(Witness retires and returns.)

Q. 223. Mr. Clark, having examined the files in your office, can you now tell at what rate the express department of the St. Louis, Iron Mountain & Southern Railway Company have collected their freights on oysters from St. Louis to Malvern?

A. Two dollars a hundred I find to be the rate.

Q. 224. Two dollars a hundred from St. Louis to Malvern?

A. Yes, sir.

Q. 225. Do you mean the rate, the table of rates?

A. Yes, sir.

Q. 226. What I am asking you is, what they actually collect on oysters? Not the table of rates, but what is actually collected from shippers of oysters from St. Louis to Malvern?

A. Are you referring to the Southern Express Co.?

Q. 227. No, the St. Louis, Iron Mountain & Southern railway? A. I find we bill through to Hot Springs for $2.75.

Q. 228. Have you collected that on your way-bills?

A. Yes, sir.

Q. 229. Have you collected a less sum on any way-bills?

A. I cannot say as to any; I don't think there have been any deductions made from the amount billed.

Q. 230. Have you got a way-bill of oysters shipped from St. Louis to Hot Springs by way of Malvern?

A. Yes, sir.

Q. 231. Will you show it to me? A. Yes, sir.

(Paper handed to counsel.)

Q. 232. Your rate from St. Lous to Malvern is how much you said? A. Two dollars a hundred.

Q. 233. And the rate from Malvern to Hot Springs is how much? A. To Hot Springs is 75 cents on oysters.

Q. 234. From Malvern to Hot Springs? A. Yes, sir.

Q. 235. Do you collect $2.75 from here to Malvern? Do they prepay it all the way to you?

A. No, it is collected in Hot Springs.

Q. 236. Does your express department run to Hot Springs?

A. No.

876 Q. 237. All you collect, then, is from here to Malvern?

A. We bill it through to Hot Springs; the freight is collected at Hot Springs.

Q. 238. Have you no knowledge of oysters being shipped from St. Louis to Malvern for $1.50 a hundred by your express department?

A. No, I have not.

Q. 239. At no time since June last, I mean?

A. I don't know that they have.

Cross-examination by Mr. PIKE, of counsel for defendant:

Cr.-Q. 1. You stated back here in reference to way-bill No. 40, in answer to some question asked you, that where there were two packages coming from the same consignor, going to the same consignee, it was customary to put them together; I will ask you if that does not depend entirely on the character of the articles sent, as to whether they should go together in one package or two. On one charge or two?

A. One weight, you mean; one amount of weights?

Cr.-Q. 2. Yes; supposing one was money and the other dry goods? How would the charge be—two charges or one?

A. Two charges, most assuredly.

Cr.-Q. 3. Would the rule be to make one charge or two charges on different articles; wouldn't that depend on the character of the articles? A. Yes, sir.

Cr.-Q. 4. If the articles were alike, or two articles were alike in size or weight, then you would make but one charge, even if there were two packages?

A. That is as I understand it.

Cr.-Q. 5. If the articles were different, different in size or character or quality, you would make two different charges?

A. In the case you mention, freight and money, they would certainly go separate.

Cr.-Q. 6. Suppose you had a package of ribbons and a package of clothes, how would that be? Would you put them together and make one charge, or charge separately for them?

A. Not knowing the contents, we should be apt to put them together.

Cr.-Q. 7. Suppose you knew the contents?

A. If there was any especial value attached to one, and not to the other, they would be obliged to go separate.

877 Cr.-Q. 8. You don't charge for articles entirely by weight, do you? A. No, sir.

Cr.-Q. 9. You don't charge by weight, for all articles, the same price? A. If there is no value attached to them.

Cr.-Q. 10. Suppose you had a package of silks and a package of coarse cloth, jeans; you wouldn't charge the same for each package, would you, if they weighed the same?

A. We should charge for value on the valuable goods.

Cr.-Q. 11. You would charge in accordance with the value?

A. Yes.

Cr.-Q. 12. Where there was a difference in the value and in the character of the goods there would be a different charge on each package, wouldn't there? A. Yes, sir.

Cr.-Q. 13. A separate charge to each package?

A. Yes, sir.

Cr.-Q. 14. You wouldn't put them together, and make a general charge on both?

A. I would not understand that to be the way.

Cr.-Q. 15. That is not the custom of express companies, as far as you know? A. No.

Cr.-Q. 16. When did I understand you came into this company?

A. The 15th of September.

Cr.-Q. 17. In reference to what occurred previous to that time, you know nothing? A. No.

Cr.-Q. 18. I will ask you to state, since you have been in there, since the 15th of September, if you know of any discriminations made by the express department of the Iron Mountain railroad against the Southern Express Company, or do you know any instance in which the express department of the Iron Mountain road has given better rates to any member of the public than it has to the Southern Express Company? A. No; I do not.

Cr.-Q. 19. And all of the accounts of that express department of the company pass under your notice? A. Yes, sir.

Cr.-Q. 20. And are audited by you? [A.] Yes, sir.

Cr.-Q. 21. If there were any such discriminations as that, would you know it from examination of these papers and accounts, or otherwise? A. Yes, sir.

Cr.-Q. 22. Do you know of any instruction, secret or otherwise, given by the superintendent or managing officers of that
878 company to discriminate against the Southern Express Company? A. I do not.

Cr.-Q. 23. You have never heard any, and never received any, have you? A. No.

Mr. **Glover**: In reference to the shipments to which I called your attention, ten-pound packages, three-pound packages, five-pound packages, one-pound packages, was there any difference on the face of the way-bill, as to value, were they not all charged by weight?

A. Yes, sir; no value was attached to them on the way-bills.

At this point the further taking of depositions in this cause was adjourned to 10 a. m., Feb. 15, 1881.

St. Louis, *Feb.* 15, 1881.

Parties met pursuant to adjournment, and, on account of the absence of the witness, adjourned until to-morrow, Feb. 16, 1881, at 10 o'clock.

St. Louis, *Feb.* 16, 1881.

Parties met pursuant to adjournment, and the further taking of testimony in this cause was resumed as follows:

O. W. **Ruggles**, being recalled on the part of the plaintiff, testified as follows:

Redirect examination by Mr. **Glover**:

Q. 1. When you were examined before you promised to furnish a list of the names of persons to whom those 1000-mile tickets and 1500-mile tickets had been sold by the St. Louis, Iron Mountain & Southern railroad; have you that list now?

A. No, sir; I have not; if you will allow me to correct you, the list of tickets sold at less than regular rates, what the letter called for that was sent to me, a list of 1000-mile tickets and 1500-mile tickets, sold at less than regular rates.

Q. 2. That was Mr. Agee's note to you? A. Yes, sir.

Q. 3. What did you do about that?

A. I made up a list of all the tickets sold from the first of April, 1880, to January 8th, 1881; that list has been sent to Col. Thoroughman, attorney of the Iron Mountain.

Q. 4. Did it contain the names of the persons to whom they were sold?

A. Yes, sir; the first list did not, the second list did.

Q. 5. You gave it to Col. Thoroughman? A. Yes, sir.

879 Q. 6. You do not know what Col. Thoroughman has done with that list, do you? A. I do not, sir.

Q. 7. How long since he had it?

A. February 4, it was sent to him.

Signature waived.

C. **Hortsman**, sworn on the part of the plaintiff, testified as follows:

Q. 1. Mr. **Glover**: Where do you reside?

A. Reside on St. Charles Rock road, [illegible] St. Louis.

Q. 2. Are you in business in St. Louis? A. Yes, sir.

Q. 3. What? A. Fruit, produce, and commission.

Q. 4. How long? A. Eight years.

Q. 5. Where is your place of business?

A. Corner of Broadway and Morgan.

Q. 6. During the last year, between January 1st, 1880, and the present time, have you had any shipment either made or received by you over railroads? A. Yes, sir.

Q. 7. Over what railroads?

A. Well, different roads—you mean freight?

Q. 8. Freights—express and common, both.

A. Almost every railroad leading to St. Louis.

Q. 9. Then you have had some over the St. Louis, Iron Mountain & Southern? A. Yes, sir.

Q. 10. Have you dealt in fruits? [A.] Yes.

Q. 11. What sort of fruits?

A. Well, the early part of the season we generally receive, first, strawberries and peaches.

Q. 12. Now, in the course of business, have you ascertained what is the average weight of peach boxes which is the subject of trade in this market, which come and go by express over the railroads?

A. The customary weight of the box is a third of a bushel; called a 3d of a bushel, the box weighs about 18 or 19 or 20 pounds average.

Q. 13. Is there any standard weight accepted by the trade as the weight of those boxes?

A. No, sir; not to my recollection.

Q. 14. You know of no agreement a box should be considered as weighing so much?

A. No, sir; I do not.

880 Q. 15. Have you bought any tickets over the St. Louis, Iron Mountain & Southern railroad? A. I have.

Q. 16. Either 1500 or 1000-mile tickets?

A. I bought one ticket; I disrecollect whether 1500 or 1000-mile ticket.

Q. 17. Did you get it under, or at the regular rate?

A. Slightly under the regular rate.

Q. 18. Do you recollect how much you you got it under the regular rate?

A. I think somewhere seven and a half, but I would not be sure.

Q. 19. Under the regular rate? [A.] Yes.

Q. 20. Were you dealing at that time over the road by express or otherwise? A. Yes, sir.

Q. 21. How did you get that ticket under the regular rate?

A. On the recommendation of Mr. Abadie.

Q. 22. Who is he?

A. He is the contracting freight agent, going south on the Iron Mountain railroad.

Q. 23. Did you have any passes over the road while dealing with its express department?

A. I got passes to New Orleans over the road, before that time, a good while before that.

Q. 24. Did you have a pass during the year 1880, a free pass? A. No, sir; I did not.

Q. 25. At what rate have you received peach boxes from the express department of the Iron Mountain; what is the lowest rate at which you have received them?

A. I think the weight has been uniform; as far as I can recollect we generally call them 6 to the 100—6 boxes to the 100 pounds.

Q. 26. That at 16 pounds would be 96? A. Yes.

Q. 27. You mean to say you have received boxes from the express department of the St. Louis, Iron Mountain & Southern at 16 pounds to the box—any box?

A. Well, it would be a trifle more than that; we generally call 6 to 100; I think that is as near as I can recollect the rate of freight I paid.

Q. 18. That would be a little more than 16 to the box?

A. Yes, less than 17 pounds to the box.

881 Q. 29. Have they carried peach boxes for you by express at 16⅔ pounds to the 100? A. That would make it.

Q. 30. You did receive such boxes then? A. Yes.

Q. 31. 6 to the 100? A. Yes.

Q. 32. What did those 6 boxes weigh, in fact?

A. I do not know as I ever weighed any; it is about 18 to 20 pounds; we always calculate the weight should be the actual weight.

Cross-examination by Col. **Broadhead**:

Cr.-Q. 1. You say you estimate the actual weight to be about 18 pounds; you have never made any measurements or weighed them?

A. I cannot say sure I did, but it is a general impression I did, and I do not see where I should get it unless we did weigh some of them, but to my recollection I do not know as I have ever weighed any of them.

Cr.-Q. 2. But your mode of business has been to consider 6 boxes to 100 pounds?

A. Yes; that is the way we reship; when we ship from here we pay freight accordingly.

Cr.-Q. 3. Have you shipped by any other express company except the Iron Mountain express department?

A. Well, I think I have by the Adams.

Cr.-Q. 4. Have you by the Southern Express Company?

A. Yes, sir.

Cr.-Q. 5. Have they the same mode of estimating the weight as the other company? A. Yes, sir.

Cr.-Q. 6. That is 6 to 100? A. Yes.

Cr.-Q. 7. That would make about 17 pounds to the box?

A. Pretty close to it—a little less than 17 pounds.

Cr.-Q. 8. You have received fruit by the Iron Mountain & Southern Express? A. I have, last year.

Cr.-Q. 9. Also by the Iron Mountain Express?

A. Yes, sir.

Cr.-Q. 10. And they all estimate the same way?

A. Yes, sir.

Cr.-Q. 11. You say you bought a 1500-mile ticket?

A. It was either 1000 or 1500; I would not say which now.

Cr.-Q. 12. From the Iron Mountain railroad office?

A. Yes, sir.

882 Cr.-Q. 13. When was that? A. Last June, I think.

Cr.-Q. 14. June, 1880?

A. It may have been May; either May or June; I am not certain which.

Cr.-Q. 15. Do you know what the regular rate was for a ticket at that time?

A. I think the regular rate at that time was $52.50, and I got it for $45.

Cr.-Q. 16. When was it you got a pass over the Iron Mountain railroad? A. That was in 1878, I think.

Cr.-Q. 17. Two or three years ago? A. Yes, sir.

Cr.-Q. 18. You never have had a pass since that time?

A. No, sir; not since that time.

Cr.-Q. 19. You are doing a large business in fruit?

A. Well, fair.

Cr.-Q. 20. You got that pass on the recommendation of Mr. Abadie? A. Yes, sir; he gave me an order for it.

Signature waived.

Geo. A. Benton, called on the part of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. Glover:

Q. 1. Where do you reside? A. 3433 Olive.

Q. 2. Where is your place of business? A. 711 Broadway.

Q. 3. What is your business? A. Commission.

Q. 4. What do you deal in?

A. Everything in the commission line.

Q. 5. Have you done an express business over any of the railroads? A. Yes, sir.

Q. 6. Over the St. Louis, Iron Mountain & Southern?

A. Yes, sir.

Q. 7. How long? A. I have been doing business now for the last seven years over the road.

Q. 8. Have you dealt in fruits? A. Yes.

Q. 9. What sort? A. All kinds of berries and peaches.

Q. 10. Have you received by express peaches?

A. Yes, sir.

Q. 11. How were they delivered to you? A. By express.

Q. 12. Through whom? A. Through the Iron Mountain Express Company and Southern Express Company; both.

883 Q. 13. Now, at what pound weight were peach boxes carried for you by the St. Louis, Iron Mountain & Southern railway express department?

A. Well, the weight of them was always considered 6 to 100 pounds, the way we always calculated the weight.

Q. 14. What did they actually weigh?

A. I should say the actual average weight would vary; some weigh more or less; I think about 18 pounds would be about the weight.

Q. 15. But the business has been done in respect to those boxes at 16⅔?

A. That is what we shipped and received them from the road; we ship them out on the roads and they take them 6 to the 100.

Q. 16. Have you had any 1500-mile tickets?

A. No, sir.

Q. 17. Any 1000-mile tickets? A. No, sir.

Q. 18. From the Iron Mountain & Southern railroad?

A. No, sir.

Q. 19. Have you bought any passes over that road the last year? A. No, sir.

Q. 20. The peach box of the kind you refer to contained how many bushels? A. 3d of a bushel box.

Cross-examination waived.

Signature waived.

Charles Gerhert, called on the part of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. Glover:

Q. 1. Where do you reside? A. 2016 Morgan street.

Q. 2. How long have you resided in St. Louis?

A. I was born and raised here.

Q. 3. Where is your place of business?

A. Broadway.

Q. 4. What is your business?

A. Fruit commission business.

Q. 5. Do you ship over the railroads by express?

A. Yes, sir.

Q. 6. Any over the St. Louis, Iron Mountain & Southern railroad? A. Yes, sir.

Q. 7. How long have you been doing business over that road by express? A. Ever since it started.

884 Q. 8. Send your peaches over that road?

A. We do not send any over it; we get them that way.

Q. 9. The consignor sends them to you over that road?

A. Yes, sir.

Q. 10. At what weight have peach boxes been expressed to you?

A. They have come at various weights; 6 to the 100 pounds has been the general rule by the Iron Mountain Express, 6 to the 100; although I have not paid particular attention to it; formerly before we used to get, I think, 5 to the 100.

Q. 11. What do they actually weigh?

A. They vary; they run from 18 sometimes to 20; generally average about 18 pounds. The custom of the trade is 6 to the 100; that is what we shipped out here. All express companies carry them at 6 to the 100.

Q. 12. Have you bought any 1500-mile or 1000-mile tickets over the Iron Mountain railroad? A. I think we did.

Q. 13. How many since June, 1880?

A. I think we did not buy any since June, 1880; we bought them before that.

Q. 14. What time? A. I think in April last.

Q. 15. How many did you buy? A. One 1500.

Q. 16. What did you pay for it? A. I do not have any recollection now; my partner bought it.

Q. 17. Was it bought at the ordinary price or less?

A. I think it was for less.

Q. 18. You do not know how much less?

A. I think for about half a cent a mile less.

Mr. BROADHEAD: You did not buy it yourself?

A. No, sir; my partner bought it.

Q. 19. Mr. GLOVER: Were you dealing by express over the road then? A. Yes.

Cross-examination by Mr. BROADHEAD:

Cr.-Q. 1. You did not buy the ticket yourself?

A. No; my partner bought it for the firm.

Cr.-Q. 2. How long have you been in the fruit business?

A. I have been in it 20 years.

Signature waived.

By consent of parties, adjourned until February 16, 1881.

885 ST. LOUIS, MO., *February* 16, 1881.

Parties met pursuant to adjournment.

C. L. LOOP, being duly sworn, testified as follows:

Direct examination by S. T. GLOVER, Esq.:

Q. 1. Mr. Loop, where do you reside?

A. In Memphis, Tennessee.

Q. 2. How long have you resided there?

A. For nearly 19 years.

Q. 3. Are you in business?

A. I am in the express business.

Q. 4. How long have you been in the express business?

A. I am in the express business over 26 years. I have been cashier and auditor of the Southern Express Company for the last fifteen years.

Plaintiff's counsel produces and shows to the witness a document marked Exhibit Number 34½, upon the outside of which is this: "Statement of amounts paid St. Louis, Iron Mountain & Southern

Railway Company by the Southern Express Company for transportation of freights, June 29th and 30th, 1880," and asks the witness:

Q. 5. State what that paper is.

A. This is a statement compiled from the vouchers or receipted bills given by the railroad company or its express department for prepayment of transportation of matter shipped by the Southern Express Company over trains of the St. Louis, Iron Mountain & Southern railway. The headings of the columns "from" and "to" denote the stations between which on the line of the St. Louis, Iron Mountain & Southern railway the matter was carried. The column headed "miles" denotes the distance between stations from and to which the matter is carried on the line of this railroad. The mileage as quoted is taken from the passenger and freight tariff of the railway company. The "weight" column gives the aggregate weight shipped at any one time from one station to another station on any one train. In some cases there are separate exhibits of weights carried between two stations. That is done to classify freight; that is, to separate articles, such as beer or perishable matter, from ordinary merchandise. The rates as quoted by the railway company's express as well as the Southern Express Company are different on this class of business.

886 In the "local" and "through" columns I have designated that freight which is purely local to this railroad, and that which is through or carried from or to points on the line of some other railroad. The "rate" column in this book does not necessarily signify the rate we paid the railroad company. This rate is inserted here to show the general express rate quoted by the railroad express to this company and to the public generally for express services on express freight between the points quoted. These rates of the railroad express include not only transportation over the railroad, but also the accessorial services, such as calling by for wagons, receipting for, way billing, loading, handling on the trains, delivery at destination, responsibility, etc. That is to say, for this rate as quoted in this book the railroad company's express undertakes to perform all the transportation and accessorial services.

The column headed "amount paid to railway company" denotes the amount paid to the railway company by the Southern Express Company on each shipment, stated opposite the amount.

Col. Broadhead, of counsel for defendant, objects to the witness reading from the book in his hand.

Witness states that he is only using the book to aid him in making the statements in a clear, systematic way.

WITNESS (continuing): These rates are no criterion of what we actually paid to the railroad company. It will be seen by reference to this book that we have paid a good deal more than these rates per one hundred pounds on the weights set opposite—that the Southern Express Company paid them more, after performing the accessorial services, than the amount of their rate per one hundred pounds entitled them to—their tariff rates.

Q. 6. Now, what do you know of the correctness of this document, Exhibit 34½.

A. Well, the amount as therein showed is the amount paid to the railroad company, as verified by the vouchers, receipted bills of the railway company, to the Southern Express Company for the transportation of the freight named therein.

Q. 7. Where are the vouchers?

A. I have them in Memphis.

Q. 8. How about the general aggregate of these payments; do you know whether that corresponds with the vouchers?

887 A. That corresponds with the aggregate of the vouchers as charged up, as filed.

Q. 9. Now, this first shipment here, in Exhibit 34½, under date of June 29th, says: "St. Louis, Missouri, to Columbus, Kentucky." How did you get the information by which you put down there "St. Louis, Missouri, to Columbus, Kentucky"?

A. That is taken from the itemized bill, made out by the railroad company.

Q. 10. Paid by the express company?

A. Yes, and in my possession.

Q. 11. How did you get, under the head of "miles," one hundred and ninety-six miles?

A. I got that from the passenger tariff of the railroad company.

Q. 12. "Weight, 425 pounds;" how did you get that?

A. That is the aggregate of all the local freight; there are four items here of through freight; that is the aggregate of all the items of the local freight.

Q. 13. On the bill paid?

A. On the bill paid—on the bill of the railway company.

Q. 14. Then, under the heading of "rate local," I find one dollar; how did you get that one dollar?

A. Well, that is on the bill presented by the railway company; they quote one dollar as their rate from St. Louis to Columbus.

Q. 15. You got that from the bill? A. Yes, sir.

Q. 16. "Amount paid to railroad company, $4.25;" how did you get that?

A. That is taken from their bills; also, where they receipted for the amount.

Q. 17. And now, as to the whole of this document, I ask you about every one of these items; what is your answer?

A. That they are all arrived at, and computed and entered, and extended in the same way, from the same information—the same kind of information.

Plaintiff's counsel produces and shows to the witness a bound volume, marked Exhibit 35, upon the outside of which is the following: "Statement of amounts paid by the Southern Express Company to the St. Louis, Iron Mountain & Southern Railway
888 Company, for transportation of express matter over the railway of the latter company, month of July, 1880, etc.," and asks witness:

Q. 18. State what that book is.

A. It is a compilation, showing the freight carried over the St. Louis, Iron Mountain & Southern railway, with the rates, mileage, and amounts paid, prepared in the same manner as the book for June, concerning which I have just testified, marked Exhibit 34½.

Plaintiff's counsel offers a bound volume, marked Exhibit 36, on the outside of which is a statement of a like kind as Exhibit 34½ and 35, for the month of August, and asks the witness to state what it is.

The witness makes a similar answer in respect to it as to the previous exhibits.

Plaintiff's counsel produces and shows to the witness a bound volume, marked Exhibit 37, containing on the outside of it the following: "Statement of amount paid by the Southern Express Company to the St. Louis, Iron Mountain & Southern railway for transportation of freight for the month of September, etc., 1880." And the witness, being asked what it is, makes the same answer in respect to it, that he has made in regard to the previous exhibits.

Plaintiff's counsel produces and shows to the witness a bound volume, marked Exhibit 38, for the month of October, and having asked the witness what it is, the witness makes the same answer in respect to it as he has made in regard to the preceding exhibits.

Plaintiff's counsel produces and shows to the witness a bound volume, marked Exhibit 39, for the month of November, and having asked the witness what it is, witness makes the same statement in regard to it as he has made in regard to the exhibits for the preceding months.

Mr. Glover: There is one matter perhaps I ought to call your attention to. There are some annotations on one of these that you did not make.

Witness: I will make the following qualifying statement: That on Exhibit 35, under the head of "estimated as reasonable compensation, three cents per ton per mile"—under that head I did not make the entries that appear there. They were made by another person. Shall I explain?

889 Q. 19. Yes, when were they made?

A. Not having time to make any estimate as to reasonable compensation, I requested Mr. Albright, agent of the Southern Express Company at St. Louis, to figure out some for illustration, and these figures in this extreme right-hand column in July and August are made by him.

Q. 20. Under what head?

A. "Estimated as reasonable compensation at three cents per ton per mile;" I have verified some of those as far as I had time before coming up here.

Q. 21. You did not make those entries under the column "Estimated reasonable compensation three cents per ton per mile," then yourself? A. No, sir; I did not.

Q. 22. Either on Exhibits 35 or 36? A. No, sir.

Q. 23. Who made out these books?

A. They were made out in my office.

Q. 24. By whom? A. By the book-keepers.

Q. 25. Under whose supervision? A. Under mine.

Q. 26. Can you state, sir, whether these books showed the amount of money paid by the Southern Express Company to the Iron Mountain road for the carriage of express freight?

Objected to, as incompetent.

Q. 27. What do these books contain, if anything, in respect to amounts of money paid to the St. Louis, Iron Mountain and Southern Railway Company, by the Southern Express Company?

A. They contain a statement of the amount paid by the Southern Express Company to the St. Louis, Iron Mountain and Southern Railway Company for the transportation of each particular shipment of freight, from each point to any other point.

D

Q. 28. During what time?

A. From June 29th to November 30th, 1880, both inclusive.

Q. 29. Mr. Loop, can you tell the examiner what is the amount on the average of the value of a ton of express freight carried over the St. Louis, Iron Mountain and Southern Railway by the Southern Express Company?

A. Do you say the average value of a ton?

Q. 30. Yes; day by day, or month by month, say during the
890 year—the average value of a ton of freight through the year,
shipped by the Southern Express Company over the Iron
Mountain railroad?

A. I should say, from my observation of the class of freight, its weight and value, that $1,000 per ton would be a very liberal amount as to value.

Q. 31. Now, in regard to a ton of freight shipped by the Southern Express Company over the Iron Mountain railroad, tell me what the railroad company does, as a matter of service, in fact, towards that ton of freight, what does it do?

A. They furnish car room for it, and motive power in carrying it over their track from one depot to another.

Q. 31. Well, sir, is there any other service they render to [illegible] ton of freight?

A. There is no other service rendered by them.

Q. 33. Can you tell me what amount of express freight carried by the Southern Express Company over this railroad, what amount in value has been lost per year for the last five years?

A. Well, I have only kept the accounts of the business done on this railway, the entire road since April, 1878. Previous to that the Southern Express Company operated over the Cairo & Fulton and Cairo, Arkansas, and Texas portions of the road, and I think that the losses and damages over that portion of the line would amount to an average of about $1,200 a year. I should say that $2,500 per annum would cover all the losses by express over the entire line on freight. As to the amounts quoted as paid, I included the losses also.

Q. 34. Mr. Loop, what do you know about the accessorial service, if anything, performed by the Southern Express Company in connection with that ton of freight collected in the city of St. Louis, carried to the Union Depot, transported over the railroad to Texarkana, delivered there to the consignee; what do you say about that?

A. Well, a ton of freight might consist of fifty or one hundred packages. The express company would have to call for each one of them perhaps in a different place in the city, gather them up, receipt for them, very often mark them, and sometimes pack them for shippers. They will have to way-bill them, haul them to the depot, furnish whatever help is necessary to have charge of them on the route, perform all the loading and unloading and trans-
891 ferring them. They would have to be taken charge of by the agent at the destination, taken to his office, entered on his books, and distributed and delivered to the consignees, and their receipts taken.

Q. 35. Now, will you state to the examiner how you value all the accessorial service in respect to express freight passed over the railroad, from the beginning to the end of the accessorial service—how it compares with the value of the transportation of the same freight by the railroad company?

Objected to, as incompetent.

A. Well, in every case; in all cases of packages of matter less than one hundred pounds, especially the smaller packages, I should say the accessorial service costs a good deal more than the transportation by rail—that is, it is of more value.

Q. 36. Mr. Loop, do you know anything about the cost of insurance; what is the insurance rate of a ton of weight—express freight—from the Union Depot, in St. Louis, to Texarkana, carried over the St. Louis, Iron Mountain and Southern railroad?

Objected to, as incompetent.

Q. 37. Now, will you answer that question?

A. Well, that would depend upon the value of the particular ton of freight.

Q. 38. I am asking for a rate which applies to all kinds?

A. Well, the express company is willing to assume all liability of loss of any kind at one-eighth of one per cent. from the time they receive the freight in any part of St. Louis, until it is delivered to the consignee at Texarkana. That would not only include the risk on the railway, but for that rate they would include the risk in their offices before shipment or after arrival at destination.

Q. 39. Do you mean to say that, if I go to the Southern Express Company, and ask them to send a shipment of freight from here to Texarkana, they would insure it for one-eighth of one per cent. on the value?

A. They will assume all liability for loss at one-eighth of one per cent.

Q. 40. Do you know whether any other express company will do the same?

A. I think so; I have not seen any late tariffs of the other ex-

press companies, but that is my understanding [illegible]
892 principal companies will do say that is the usual [illegible] of
express companies, I believe, for a distance of five hundred
miles.

Cross-examination by Col. J. O. Broadhead:

Cr.-Q. 1. What office did you say you hold in the Southern Express Company? A. Cashier and auditor.

Cr.-Q. 2. Your office is in the city of Memphis, is it?

A. My office is there—my department.

Cr.-Q. 3. Is that the place that you do your business?

A. Yes, sir.

Cr.-Q. 4. As auditor and cashier? A. Yes, sir.

Cr.-Q. 5. What are the general duties of that office?

A. The general duties of the auditor and cashier are to collect the revenue of the company, disburse it, keep its accounts with its agents—keep its books and accounts generally.

Cr.-Q. 6. Have you clerks in the office? A. Yes, sir.

Cr.-Q. 7. And book-keepers? A. And book-keepers.

Cr.-Q. 8. You keep a regular set of books? A. Yes, sir.

Cr.-Q. 9. You receive the way-bills that come with the express freight—you examine them, do you?

A. They examine them in the office.

Cr.-Q. 10. Where do the way-bills go when they get to the office and all memorandums—to what clerks, what officers?

A. They go to various clerks; to-day to one clerk, to-morrow to another; that is, one clerk may be detailed at one time, and another at another time.

Cr.-Q. 11. Is not there some particular clerk whose business it is to look after those papers? A. Yes, sir.

Cr.-Q. 12. Who is it; what office does he hold?

A. He don't hold any office, he is a clerk in the office; his duty is to attend to just such clerical duties as I may assign to him.

Cr.-Q. 13. He receives the way-bills and files them away when you get them? A. You want the man's name?

Cr.-Q. 14. No; I do not want the man's name, but whether you do, or one of the clerks.

A. One of the clerks.

Cr.-Q. 15. Sometimes one, and sometimes another?

A. One is always designated to do it; it is not done indiscriminately. I may assign one, and he may be two or three years in that
place.
893 Cr.-Q. 16. And then you may assign another man to the
same duty? A. I can, at any time; yes, sir.

Cr.-Q. 17. Do you, as a matter of fact?

A. Sometimes; there are changes made.

Cr.-Q. 18. Sometimes; is it often done? Do you have more clerks than one in the same year, to perform the same duties, at different times?

A. Well, that particular duty that you speak of, of receiving way-bills and filing them away, that may be done by several different men in the course of a year.

Cr.-Q. 19. Is there any book entry made of the way-bills?

A. There is of most of them.

Cr.-Q. 20. Do you keep copies of the way-bills?

A. We do not keep full copies.

Cr.-Q. 21. Do you enter the copies in a book?

A. Not a complete copy of the way-bill.

Cr.-Q. 22. How much of the way-bill?

A. We generally enter the number and date of it, and the amount.

Cr.-Q. 23. And the name of the consignee?

A. Not usually.

Cr.-Q. 24. Nor the shipper? A. Nor the shipper.

Cr.-Q. 25. Do you enter the name of the railroad by which it comes?

A. Not necessarily; we do sometimes, when it is necessary; when there is any reason for it. If there is not any particular reason for wanting to know it, we do not do it.

Cr.-Q. 26. Do you separate the way-bills from the different roads, keep them separate? A. We do not.

Cr.-Q. 27. But you have book entries of the items, taken from the way-bills of which you have spoken; that is to say, the amount, the weight, and the amount paid?

A. Well, those entries that you speak of are made in what we call tally-books. They are made in there simply for convenience in checking the amounts against our agents' reports. These books are not permanent books of record; they are only memoranda. For example, if a way-bill is sent from Memphis to New Orleans, or from St. Louis to Jackson, Tenn., it will be written up in the manner just stated. The reports of the agent at Jackson, Tenn., and
894 the way-bill received of the railroads, and the St. Louis office,
for the way-bills forwarded, will be checked against that book when the agent's accounts are settled up. If we find they have accounted everything, that book is of no value. We can sell it for old paper.

Cr.-Q. 28. What information have you of the place of shipment, and the rate at which the shipment is made, the character of the freight, and the weight, except by the way-bills?

A. We do not need any evidence as to the weight in auditing the accounts of the agents.

Cr.-Q. 29. I am not speaking about the agents particularly, but I am speaking about the history of a piece of freight, express freight, sent from St. Louis to Memphis, for example, or from Little Rock to Memphis, or from St. Louis to Texarkana?

A. That weight is entered on these way-bills.

Cr.-Q. 30. I ask you whether you have any other information in regard to the character of the shipment in those particulars, except what you get from the way-bill?

A. Our messengers are required to make statements on some roads.

Cr.-Q. 31. Do they make those statements in writing?

A. Yes, sir.

Cr.-Q. 32. Report them to the auditor's office?

A. Yes, sir; the statements are sent in.

Cr.-Q. 33. How are those statements preserved?

A. Well, after a settlement with the railroad is made—if the settlement is based on the statement—after the settlements are all made they are of no further value, and are not systematically preserved, although they are frequently.

Cr.-Q. 34. Now, the particular entries that you make here. I call your attention to them in the first Exhibit, number 34 1-2 of a shipment from St. Louis, Missouri, to Charleston, Missouri; you gave the miles, the weight, the rate, and the amount paid to the railroad company; now where do you get those several items from?

A. I get this information, with the exception of the miles, entirely from the receipted bills of the railway company to the Southern Express Company.

Cr.-Q. 35. Are those bills presented at your office for settlement—the auditor's office?

A. The bills are required to be prepaid. Freight must be prepaid before the express matter is allowed to be shipped.

895 Cr.-Q. 36. The charges for the shipment from St. Louis to Charleston are prepaid in St. Louis to whom?

A. To the railroad company.

Cr.-Q. 37. What officer of the railroad company?

A. The bills are all made out in favor of the express department of the St. Louis, Iron Mountain & Southern Railway Company, and receipted for by their agents.

Cr.-Q. 38. That is, the bills for express matter shipped by the Southern Express Company over the Iron Mountain railroad? A. They are.

Cr.-Q. 39. Are settled by the express department of the Iron Mountain railroad, here in St. Louis? A. Yes, sir.

Cr.-Q. 40. Who makes the settlements here?

A. Mr. Albright, our agent in the city.

Cr.-Q. 41. He pays the money?

A. He pays the money to whoever may be designated by the railway to receive it.

Cr.-Q. 42. And the bill is receipted to him? A. Yes, sir.

Cr.-Q. 43. What does he do with that bill?

A. He sends it to me.

Cr.-Q. 44. What do you do with it?

A. I enter it up on my books and file it.

Cr.-Q. 45. Do you ever find it necessary to compare those receipts with the way-bills, or any other paper, to see whether it is correct or not?

A. In what respect do you mean correct?

Cr.-Q. 46. In any respect—in weight, for example.

A. I have examined some of those bills with the view of seeing how our revenue compares with what we pay to the railroad company. I found that we very often pay the railway company a great deal more than we get; that while we charge the public about the same as the Iron Mountain railway professes to charge them, that we are often required to pay the railway company express more than our own rate.

Cr.-Q. 47. Taking it for granted that the receipts and everything done in St. Louis are correct?

A. Yes, sir; these vouchers come to me and I paid the money on them, and I am satisfied they are correct.

Cr.-Q. 48. You do not pay the money to the railroad?

A. I pay it to Mr. Albright.

896 Cr.-Q. 49. These items, then, are taken from a settlement that you have between yourself and Mr. Albright?

A. Mr. Albright returns me the railway company's voucher as evidence that he has paid the money out.

Cr.-Q. 50. What has become of those vouchers?

A. I have them in my possession.

Cr.-Q. 51. You can produce them, I suppose? A. I can.

Cr.-Q. 52. Where did you say you took the rate from—the rate of transportation on this table?

A. That rate, I would like to explain that again. The rate as inserted in these books is simply a copy of the rate as quoted by the railway company on their bills to the Southern Express Company, and it does not necessarily signify that we paid these rates.

Cr.-Q. 53. I just wanted to know where you got these rates from. Now, what rate-bill was this? Do you know when you made this what rate bill it was that you made this from? They change the rate bill sometimes, don't they?

A. The railway company in their bills to us put the rate down on all items.

Cr.-Q. 54. I am not speaking about the rate they put on items; I am speaking about the rate on this table?

A. The rate is taken from that item on their bill; it is not taken from any general tariff; it is taken from the rate they put down opposite the item on the bill we paid. For example, if we carried thirty pounds from St. Louis to Lutesville, they say their rate is one dollar and ten cents per hundred pounds, and yet they made us pay fifty-five cents on thirty pounds, and they put $1.10 a hundred opposite that identical item of freight.

Cr.-Q. 55. Does the entry of fifty-five cents appear upon the bill presented? A. Yes, sir.

Cr.-Q. 56. Do you know whether those rates refer to merchandise rates of the Iron Mountain railroad, or ordinary freight rates?

A. Well, those rates refer to the particular matter against which the rate is set opposite. If it is what they call special matter, such as beer, they will have one rate opposite to that. It may be something lower than their merchandise rate, but the rates on these
897 books are, in every case, precisely what the railway company's agent put down opposite the same item of freight that is set opposite to it in those books.

Cr.-Q. 57. Do you know what that rate refers to; whether it refers to express rate or to general merchandise?

A. That rate means that that is the St. Louis, Iron Mountain &

[illegible] Company's express rate per [illegible] item of freight against which it is [illegible] the same.

Cr.-Q. 58. How do you explain, then, that the charge was different from the regular rate?

A. I do not know; I should think that is for them to explain.

Cr.-Q. 59. I want to know if you have any explanation of it; I want a fair thing in this case; I do not want to take any advantage of you, nor do I want you to take any advantage of me.

A. I do not know; they charge so; if we ship more than one package they make a separate charge on each package, whereby the the aggregate charge on the packages will amount to more than their rate per 100 pounds.

Cr.-Q. 60. The estimate made by Mr. Albright in two of these books, you do not know anything about; that is, the estimate as to reasonable compensation at three cents per ton per mile?

A. I only undertook to verify a few items; I did not have time to go through; I cannot speak as to that.

Cr.-Q. 61. That is three cents per ton per mile, irrespective of the character of the freight; just by the rate?

A. Yes, sir; that was the understanding, that it was all to be figured at three cents.

Cr.-Q. 62. When you were examining Exhibit 34½ you read from a memorandum printed in red ink?

A. I partly read and partly did not; I explained this book, and in some cases I referred to this memorandum in it simply to get the order of my explanation, but I did not read it *verbatim*.

Cr.-Q. 63. Who made that memorandum? A. I did.

Cr.-Q. 64. You made it yourself? A. Yes, sir.

Cr.-Q. 65. Whose figures are these in these books; are these your figures?

A. Those are not my figures; they were made by one of the accountants in the office.

Cr.-Q. 66. That is the case with Exhibit 34½?

A. Yes, sir.

898 Cr.-Q. 67. You had no other papers before you when this table was made out, as it appears in Exhibit 34½ and the following exhibits, except the receipted bills of the St. Louis and Iron Mountain railroad?

A. That is all; that is all that it is made from.

Cr.-Q. 68. You have undertaken to speak of the average value of a ton of express freight; what is the basis of your calculation as to the value of a ton of express freight?

A. By actual examination of the general run of freight carried.

Cr.-Q. 69. Does the express man always know what is contained in a package that he carries by express?

A. Not if the shipper chooses to withhold the contents; as a rule, it can be ascertained.

Cr.-Q. 70. There are some instances in which it is refused, are there not? A. They may be cases in which it is refused.

Cr.-Q. 71. Well, you say actual examination; do you mean an examination of the articles themselves? A. No.

Cr.-Q. 72. Have you any table of values of express matter shipped by your line?

A. We have not; there is a large proportion of articles shipped through that you can tell the contents near enough to form an estimate; I only profess to make an estimate; I do not speak from any precise knowledge.

Cr.-Q. 73. Has the nature of your business, as cashier and auditor of the company, caused you to inquire into the values per ton of matter shipped by express?

A. No; I have never made up any statistics on it.

Cr.-Q. 74. Well, this is, then, a mere guess of yours, Mr. Loop; you do not pretend to be accurate about that, as to the value per ton of express freight?

A. Well, it is an estimate based on actual examination of freight, forming as near as possible an approximation of the value of each piece shipped. There is but a very small proportion of the shipments of which the value cannot be ascertained.

Cr.-Q. 75. I suppose so, by some one who undertakes to ascertain them, but have you undertaken to do that?

A. I have on one or two occasions.

Cr.-Q. 76. You think those one or two occasions enable you to
speak generally about the average value of a ton of freight;
899 you think that your examination has been sufficient to en-
able you to judge of the average value of a ton of freight?

A. Well, my general observation of the volume of express business is with the occasions when I did make the examination that they were very fair examples; that is, an average lot of express freight.

Cr.-Q. 77. Through what period of time does this average of value extend—your estimates?

A. It don't run back very far. I have examined it here in St. Louis lately, and probably there is more valuable freight shipped out of St. Louis than almost any where we do business, that is in packages.

Cr.-Q. 78. The character of the express freight varies at different seasons of the year?

A. It does, of course, somewhat. At certain times we would have large quantities of fruit and vegetables.

Cr.-Q. 79. When did you undertake to make an estimate of the amount of losses that your company has sustained?

A. I made that up from my books before I left Memphis.

Cr.-Q. 80. During what period of time?

A. I took the Cairo & Fulton railroad and the Cairo, Arkansas and Texas railroad from 1874 up to 1880, and I found that the average loss, as near as I remember, in round figures to be $1,200 per annum on that part of the line.

Cr.-Q. 81. On which part of the line?

A. On the Cairo & Fulton and the Cairo, Arkansas and Texas railroads.

Cr.-Q. 82. How long did you say you had been in the express business, Mr. Loop?

A. I have been in express business for 26 years.

Cr.-Q. 83. Have you ever been in railroad business?

A. I was once agent for a railroad company.

Cr.-Q. 84. Local station agent, I suppose? A. Yes, sir.

Cr.-Q. 85. You never run on a train?

A. I have been express messenger on a train.

Cr.-Q. 86. That is for an express company? A. Yes, sir.

Cr.-Q. 87. You had nothing to do with the running of the railroad though? A. Nothing whatever.

Cr.-Q. 88. You never have been an engineer?

A. Never have been an engineer.

900 Cr.-Q. 89. Do you know how much it costs to keep a road in repair, an engine and cars?

A. I have no personal knowledge of that, except what I have heard.

Cr.-Q. 90. Are you capable of judging of how much it costs to run a train between two given points?

A. I have not any personal knowledge, none but statistics, or books written by experts—railroad men.

Cr.-Q. 91. By express men? A. No, railroad men.

Cr.-Q. 92. Do you know how much it costs per ton per mile for a railroad to carry freight?

A. I cannot tell; I do not know; I cannot say.

Cr.-Q. 93. Do you know whether it costs more to run a passenger train or a freight train?

A. I have no knowledge on that subject.

Redirect examination by Mr. Glover:

Q. 1. Mr. Loop, when you were asked how you know that 55 cents charged for carrying 30 pounds of freight 133 miles exceeds the rate which the Iron Mountain railroad professes to charge by its published tariff rates, cannot you tell by calculating whether it exceeds it or not?

Objected to.

A. I understood Col. Broadhead to ask why they charged us more than that rate.

Q. 2. Mr. Glover: Well, I did not understand the question then. You said that the freight bills the St. Louis, Iron Mountain & Southern Railway Express Department have charged against the Southern Express Company, and which have been paid by the Southern Express Company, are sent to your office and filed there, and that you have them in your possession. I want to know whether you included in that the freight bills or receipted vouchers for the month of August, 1880; and, if not, where they are?

The vouchers for the month of August, paid to the railway company for transportation at St. Louis, are here.

Q. 3. In whose possession? A. In Mr. Albright's.

Q. 4. You do not mean to say that they are in your possession at Memphis? A. No, sir.

Q. 5. How did they come into Mr. Albright's possession?

A. I sent for them to Memphis, and had them delivered to him.

Signature waived.

901 Plaintiff's counsel offers Exhibits 34½, 35, 36, 37, 38, and and 39 in evidence, accompanied with the statement that he wants the St. Louis, Iron Mountain & Southern Railway Company to produce their own bills against the Southern Express Company, and their own account of moneys received by them on those bills.

Defendant's counsel objects to the introduction of said papers, Exhibits 34½ to 39 inclusive, as incompetent and irrelevant evidence, and further on the ground that they are not original papers or competent evidence.

At this point the further hearing of the case was adjourned until to-morrow, February 17th, at 2 p. m.

St. Louis, *Feb.* 17*th*, 1881.

Parties met pursuant to adjournment.

Plaintiff's counsel produces before the examiner, and offers to be read from a book entitled, "A Digest of the Statutes of Arkansas, embracing all laws of a general and permanent character, in force at the close of the session of the General Assembly of 1873, by Edward W. Gantt; examined and approved by Hon. H. C. Caldwell, judge of the United States district court for the eastern district of Arkansas; published by authority of the General Assembly of the State of Arkansas, Little Rock. Little Rock Printing and Publishing Company, 1874."

Plaintiff's counsel reads from a portion of said book, entitled the Constitution of the State of Arkansas, as adopted at the convention Feb. 11th, 1868:

"Article 5, the legislative department, 48th section. The General Assembly shall pass no special act conferring corporate powers. Corporations may be formed under the general laws, but all such laws may, from time to time, be altered or repealed. Dues from corporations shall be secured by such individual liability to stockholders, and other means, as may be prescribed by laws; but in all cases each stockholder shall be liable over and above the stock by him or her owned, and any amount unpaid thereon, to a further sum, at least equal in amount to such stock. The property of corporations now existing, or hereafter created, shall forever be subject to taxation, the same as the property of individuals. No right of way shall be appropriated to the use of any corporation, until full compensation therefor shall first be made in money, or first secured by deposit of money to the owner, irrespective of any benefit, from any improvement proposed by such corporation; which compensation shall be ascertained by a jury of twelve men in a court of record, as shall be prescribed by law."

902 Plaintiff's counsel reads from another portion of [illegible] entitled, "Railroads," page 112, the following sections:

"4994. No railroad in this State shall charge for the transportation of any person or persons more than five cents per mile for all first-class passengers, and three cents per mile for all second-class passengers.

"4995. Each and every railroad doing business within the limits of this State shall have first and second class cars, sufficient for the accommodation of the traveling public, on all passenger or mail trains run within the limits of this State."

"4996. The rates of freight on all railroads within the limits of this State of Arkansas, shall be as follows: that the said railroads receive for the transportation of goods, wares, and merchandise, produce, etc., for heavy articles not to exceed 50 cents per hundred pounds, and 10 cents per cubic foot on articles of measurement, for every 100 miles, and in the like proportion for a larger distance.

"4997. All railroad companies may, when they see fit, farm out this right of transportation on said roads, as subject to the rates above mentioned.

"4998. Should any railroad charge greater rates than this act provides, said railroad shall be liable to pay to the party injured or consignees, double the amount of freight so overcharged, to be recovered by an action at law, Acts, April 29, 1873."

Defendant's counsel objects, as irrelevant.

Plaintiff's counsel produces and shows to the examiner, and puts in evidence a pamphlet entitled, "Official Railway Guide of St. Louis for February, 1881," which the defendant's counsel admits contains the time-table and distance table of the defendant railroad. It is marked Exhibit 40.

CALVIN H. ALBRIGHT, being recalled, testified as follows:

Direct examination by Mr. GLOVER:

Q. 1. You have been examined before in this case?

A. I have.

Q. 2. When you were examined before you did not give the limits to which the wagons and teams of the Southern Express Company collected freight to the North and to the South; you did give the limit West; will you now state to what distance above Olive street your accessorial teams and wagons and servants go to the North?

A. We go to North Market street.

Q. 3. How far do they run down to the South in collecting your express freight? A. They go to Soulard street, South.

903 Q. 4. Are you acquainted with the course of business in the conduction of express freight after it is placed upon a train of the St. Louis, Iron Mountain & Southern Railway Company?

A. I have a general knowledge of the business.

Q. 5. Well, sir, when a package, a box, or sack is delivered to the

Iron Mountain Railway Company for transportation, state to the examiner what that railroad company does in regard to the parcel which may be contained in a box, or in regard to the box itself, if it had no parcels. State first of a box that contains no parcels, that contains a mass of goods; what do they do about it; what service do they render?

A. They perform no service whatever, except merely to furnish transportation over their rails for it.

Q. 6. Now, in regard to a box containing parcels, what service does the railroad company render to the parcels in the box?

A. They render no service to the parcels, except carriage over their iron track; they render no other service to it at all.

Q. 7. What is the value of a ton of ordinary express matter, on the average, running through a year, according to your observation, in dollars; what is the value of an ordinary average ton of express matter?

A. Well, I would say that the average value of a ton, that is, I would estimate it, at from $1,000 to $1,500; that is taking the average value of the ordinary run of freights by express.

Q. 8. What is the risk of damage ordinarily incurred in a shipment of express freight for value?

A. You mean running through the year?

Q. 9. Yes. A. Well, I can hardly answer that question. We would insure it—that is, the Southern Express Company would—for one-eighth of one per cent. on its value.

Q. 10. The Southern Express Company offers to do that?

A. We do that when asked to.

Q. 11. Do you know what is the fact in regard to other express companies; what they hold the rate of insurance to be?

A. They will insure for one-eighth of one per cent. for certain distances.

Q. 12. Well, say from St. Louis to Texarkana?

A. Let me speak of my own knowledge about another point.
The other express companies don't run to Texarkana. The
904 American Express Company will insure for one-eighth of one
per cent. to Chicago, and the United States Express Company
will insure for the same—one-eighth of one per cent. on the value.

Q. 13. And the Southern Express?

A. We would insure from one-eighth of one per cent. from here to Texarkana, a distance of 500 miles.

Q. 14. Is it 500 miles? A. It is a little less; 490, or somewhere along there.

Q. 15. Do you know upon what terms the defendant railroad here assumes the risk of express matter carried over its road? A. They have a clause in their tariff which says that they charge so much on value.

Q. 16. What does that mean?

A. We understand that to mean insurance.

Objected to.

Q. 17. Is it so accepted by the public?

A. That is the understanding of the express company.

Objected to.

Q. 18. In the course of your dealing—I mean the dealing of the Southern Express Company with the St. Louis, Iron Mountain & Southern Railway express department—what allowance has been made, if any, to you in respect to the weight of meat-boxes when you have shipped meat over that road; what did the railroad allow you for the weight of the boxes of meat?

A. They would allow us the weight of the ice off, but not the weight of the box; they would charge us for the weight of the box and the meat.

Q. 19. Has that been the usual course?

A. That has been their usual course, and what they have done repeatedly.

Plaintiff's counsel shows to witness Exhibit 40, and asks him:

Q. 20. What do you know about that; where did you get it?

A. I received that yesterday from the St. Louis, Iron Mountain & & Southern railroad ticket office, given me by their ticket agent; that was given me as a table of distances; I asked for a table of distances, and that was handed to me.

Q. 21. Distances where?

A. Over the St. Louis, Iron Mountain & Southern railroad.

905 Plaintiff's counsel produces and shows to the witness a bound volume, heretofore put in evidence, being Exhibit 36, and calls his attention to page one of said exhibit, and to a column of figures on the same, under this heading: "Estimated as reasonable compensation at three cents per ton per mile."

Q. 22. What do you know about the figures in that column—who made them? A. I made them.

Q. 23. How did you happen to make them?

A. I was requested to do so, to show the reasonable compensation per ton per mile that should be charged the Southern Express Company for the transportation of express freight over the St. Louis, Iron Mountain & Southern railway.

Q. 24. In respect of what?

A. In respect to the items of shipment, as shown on that page that the figures are opposite.

Q. 25. I will read to you from page one of Exhibit 36, as follows: "August 1st, 1880, from St. Louis to Columbus, Ky.; miles, 196; weight, 130 pounds; rate, $1.00; amount paid railway company, $1.50; estimated as reasonable compensation, three cents per ton per mile, 38 cents and 22 hundredths." Now, I ask you what is the meaning of that 38 and 22 hundredths of a cent, put down here as estimated reasonable compensation, three cents per ton per mile. Just explain what that means.

A. That is the result of a calculation showing the reasonable compensation for the carriage, by the St. Louis, Iron Mountain and Southern railway, of 130 pounds 196 miles, to Columbus, Ky.

Q. 26. Why did you estimate that reasonable compensation to be three cents per ton per mile?

A. We allowed the railroad company, in making the calculation, two cents for a reasonable compensation per ton per mile over their road, if this had been common freight. I then added one-half a cent per ton per mile for the increased cost and compensation there might be for carrying express freight by their passenger train. I then added one-half a cent per ton per mile for the risk, if there is any, making three cents.

Q. 27. Now, sir, did you make this book?

A. No, sir; I did not.

906 Q. 28. Who did make it? A. It was made by our auditor, or furnished by our auditor.

Q. 29. All that you made of it is what is under the column "estimated reasonable compensation, three cents per ton per mile"? A. That is all.

Q. 30. Who do you say made this book?

A. It was made by the auditor, or made in his office.

Q. 31. Here is a statement in this first item, which I have read to you: "From St. Louis to Columbus, Ky., 196 miles, 130 pounds weight, rate $1.00; amount paid the railroad company, $1.50." How do you know, or do you know, whether that dollar and a half was paid for that 130 pounds of freight?

A. I paid it myself, and have compared that item with the receipt that I hold from the Iron Mountain road for the money.

Q. 32. Now, this says 196 miles from St. Louis to Columbus, Ky. What do you know about that distance?

A. That is the correct distance, as given by their table of distances that I received yesterday from the Iron Mountain road.

Q. 33. What do you know about that one-dollar rate; what do you know of that item?

A. That is the St. Louis, Iron Mountain and Southern railroad express department's published rate to Columbus, Ky., on one hundred pounds.

Q. 34. According to any paper issued by them that you know of?

A. According to Exhibit 30 in this suit. Opposite the entry of that shipment on the bills furnished us, the receipted bills given us by the St. Louis, Iron Mountain and Southern railway, they have inserted the rate per 100 pounds, which is one dollar; and, having examined the book, I will make the same statement about the entries on Exhibit 36, down to De Soto, that I have in regard to the first item.

Q. 35. Then your statement is that, in respect to the entries on page one, Exhibit 36, to wit, St. Louis to Columbus, Ky.; St. Louis to Charleston, Mo.; St. Louis to Malvern; St. Louis to Little Rock, Arkansas; St. Louis to Fulton; St. Louis to Poplar Bluff, Mo.; St. Louis to Newport, Ark.; St. Louis to Prescott, Ark.; St. Louis to
Texarkana, Ark.; St. Louis to Hope, Ark.; St. Louis to De-
907 sark, Mo.; St. Louis to Guerdon, Ark.; St. Louis to Corning,
Ark.; St. Louis to Gainesville, Ark.; St. Louis to Arkadel-
phia, Ark.; St. Louis to Malvern, Ark.; St. Louis to Peach Orchard,

Ark.; St. Louis to [illegible], Ark.; St. Louis to [illegible] St. Louis to Judsonia, Ark.; St. Louis to Harville, Mo.; St. Louis to De Soto, Mo., you make the same statement? A. Yes, sir.

Q. 36. Who paid the sums in respect of these articles under the head of "amount paid railway company"?

A. I paid them myself.

Q. 37. Paid them to whom?

A. Paid them to the representative or agent of the St. Louis, Iron Mountain & Southern railway express department; I think his name was W. P. Vary. I hold his receipt over his own signature.

Q. 38. Have you any evidence of that payment in your possession? A. I have, sir.

Q. 39. What is it, and will you produce it?

A. It is their receipted bill.

(Witness produces the receipt.)

Plaintiff's counsel here files the receipt mentioned by the witness, for the payment in respect to the shipments which he has mentioned, and it is marked Exhibit 41; and it is agreed by defendant's counsel that a copy of the same may be substituted as Exhibit 41, and the original returned to the witness, the copy to embrace only the receipt for the shipments of which he has testified.

Q. 40. Mr. Albright, why have you not examined the whole of these exhibits, which were made under the direction of Mr. Loop and filed here yesterday, and under the head of "estimated reasonable compensation, three cents per ton per mile," extended the amounts for reasonable compensation upon all these shipments?

A. It would have been impossible to have done it in so short a time.

Q. 41. How long would it take you to do it?

A. I haven't calculated the time; I wouldn't undertake to do it in less than two or three weeks' time, or a month's time.

Q. 42. Well, sir, calling your attention to Exhibit 30, which is, "The St. Louis, Iron Mountain & Southern Railway Company, and Memphis and Little Rock Railroad Company express department, money and freight tariff, from St. Louis, Mo.," I wish to know whether you have made a calculation of the rates per hundred pounds on express freight, to show how many cents per ton per mile the express department's freight rate of the St. Louis, Iron Mountain & Southern railway indicates. A. I have made such calculation. 908

Q. 43. Have you got that calculation about you?

A. This is it, sir, in my hand.

Q. 44. In what form is it? A. Tabular form.

Q. 45. Will you give me that paper that you have made?

A. Yes, sir.

Plaintiff's counsel shows to defendant's counsel and to the examiner the paper which the witness has spoken of, being calculation of the rates per ton per mile claimed by the St. Louis, Iron Mountain

& Southern Railway Company, as per its published express freight rate, Exhibit 30.

Paper marked Exhibit 42.

Q. 46. Mr. Albright, I call your attention to the first item upon Exhibit 42, the paper which you have named, in these words: "From St. Louis, Mo., to Allenville, Mo., rate per hundred pounds, one dollar; distance from St. Louis, 147 miles; cents per ton per mile, 13 and 607 one-thousandths." Now, sir, what is that 13 and 607 one-thousandths cents; what does that mean? A. That means the rate per ton per mile the St. Louis & Iron Mountain charges, as per Exhibit 30, for carrying express freight.

Q. 47. Well, now, sir, what does the railroad company charge, according to Exhibit 30, from St. Louis to Arcadia?

A. Twenty and 224 one-thousandths cents.

Q. 48. What is the rate per ton per mile, according to Exhibit 30, to Arkadelphia, Ark.?

A. Ten and 943 one-thousandths cents.

Q. 49. What is the rate charged by the railroad company for carrying express matter to Beebe, Ark., according to Exhibit 30? A. Ten and 888 one-thousandths cents.

Q. 50. What is the charge of the railroad company for carrying express matter to Bismark, Mo., from St. Louis per ton per mile? A. 20 cents.

Q. 51. I will ask you, Mr. Albright, having examined you as to a number of these points, to please state in general what is the
909 meaning of these amounts, under the column "rate per ton ton per mile," opposite Blackwell, Bradford, Charleston, Columbus, Bailey, Delassus, De Soto, Fredericktown, Guerdon, Hope, Ironton, Jefferson Barracks, Kimmswick, Little Rock, Lutesville, Malvern, Mineral Point, Newport, Peach Orchard, Popular Bluff, Mill Springs, Walnut Ridge, and Texarkana; make a general statement now as to what is the cost in cents per ton per mile. A. The charge per ton per mile in cents, as per tariff per 100 pounds in Exhibit No. 30, is set opposite the name of each station under the column "rate per ton per mile," on Exhibit 42. That paper, however, does not embrace all the stations to which we ship express matter over the Iron Mountain road; it is only to illustrate the point.

Q. 52. Does this paper embrace anything else except the charge for transportation per hundred pounds? A. No, sir.

Q. 53. Does it embrace charges upon the sacks, boxes, and safes? A. It does not embrace charges upon sacks of packages or boxes of packages or safes.

Q. 54. What does the railroad charge for them?

A. They charge three rates on boxes of packages and six rates on safes.

Q. 55. This table relates to shipments of 100 pounds of freight according to Exhibit No. 30? A. Yes, sir.

Q. 56. And does not include the charges of three rates and six rates under the orders of the express department of the Iron Mountain railroad on boxes and safes?

A. It does not; nor does it include the charge made to us on packages of less than 100 pounds—classification packages.

Q. 57. How much more is that according to the rate?

A. In some instances—in my former testimony I think I gave one calculation—at $2.37 per ton per mile.

Q. 58. Now, payments that have been made to your knowledge since June, 1880, since the controversy between the railroad and the express company commenced, please state under what circumstances these payments were made.

A. Since and including June 29th, 1880, we have paid these bills; I have paid the bills that I paid under protest. I have paid all the bills from St. Louis, except perhaps three or four.

Q. 59. Why did you pay them at all?

A. We paid them because we were compelled to.

Q. 60. Compelled by what?

910 A. By the St. Louis, Iron Mountain & Southern Railroad Company to prepay or have our matter left in the city of St. Louis; they would not take it unless we prepaid the charges.

Q. 61. You paid in order to get your shipment aboard the train?

A. Yes, sir; as I stated, we pay once a day, and that is understood to be prepayment; the receipts will show it is prepaid.

Q. 62. Since the Iron Mountain railroad has had an express department, how has it collected freights about the city?

A. For their own express?

Q. 63. Yes. A. With wagons.

Q. 64. Where do those wagons run to?

A. Run to the business portion of the city and through the city, and between their offices and their depot to the train, and through the streets, collecting up express matter.

Q. 65. Assume this case: That you send one of your wagons or teams and driver to North Market street for a 75-pound package; you take it from there to the Union Depot and put it on board the train; it is carried by the railroad, in possession of your messenger, down to Texarkana, put on board your express wagon at Texarkana, and hauled one mile and delivered to the consignee. Having assumed that case, assume another: That the Iron Mountain railroad express department also went to North Market street along with your wagon to get a package for itself of the same size; went to the Union Depot, put it on the railroad, sent it down to Texarkana, and delivered it a mile from the depot alongside of yours. In that case the freight charged the customer would embrace, so far as the Iron Mountain railroad was concerned, the distance from North Market street to the Union Depot, Union Depot to Texarkana, to the residence of the consignee; the same distance and the same labor would be embraced by your own express wagon, sent to North Market street, carrying the freight to the Union Depot, then your messenger carrying it to Texarkana, and delivering it to your messenger there, to be delivered to the consignee. Now, for doing that work what deduction has been made to you for this service from your company which the

Iron Mountain express department did not do? A. Nothing whatever.

Q. 66. Has nothing been allowed you in any case for such services? A. Not to my knowledge, sir.

911 By consent of parties the cross-examination of this witness was postponed until to-morrow, February 18, at 11 o'clock a. m.

St. Louis, *Feb.* 18, 1881.

Parties met pursuant to adjournment.

Plaintiff's counsel produces a card with this caption, "St. Louis, Iron Mountain & Southern railway distance card;" the same is shown to defendant's counsel, and he is asked to admit that it is the distance card of the defendant railroad company. On the same card is the following: "St. Louis, Iron Mountain & Southern Railway Company Express, money and freight tariff."

Defendant's counsel consents that the whole card may be put in evidence.

The card is, by the examiner, marked Exhibit 43.

Plaintiff's attorney produces and shows to the witness, C. H. Albright, four blank forms of bills of lading, marked, by the examiner, Exhibits 44, 45, 46, and 47.

Q. 67. State what these exhibits are?

A. Exhibit 44 is the Southern Express Company's receipt, or what is called the Southern Express Company's collection receipt or bill of lading.

Q. 68. Collection receipt for what?

A. For the collection of notes, drafts, bills, &c. That is the form of receipt that is now in use. Exhibit 45 is the Southern Express Company's money remittance receipt or bill of lading. Exhibit 46 is the Southern Express Company's freight receipt or bill of lading now in use. Exhibit 47 is the Southern Express Company's freight receipt now in use, in the body of which is stamped, "Value asked and not given," after the words "valued at," and before the word "dollars."

Q. 69. How long have those forms been in use in conducting the business of the Southern Express Company?

A. To my knowledge they have been in use for eight or ten years. Ever since I have been in the service of the company.

Q. 70. Well, now, what is the meaning of that stamp, "Value asked and not given;" what is the occasion of that; tell how that comes about?

912 A. When a shipper brings a package into our office to have it receipted for, or delivers it to any of our call-men, we ask him the value of it—of the shipment—and if he says there is no value, or if he declines to give a value, we stamp his receipt, "Value asked and not given."

Q. 71. Suppose he gives a value?

A. We insert it on the line between the words "valued at," and before the word "dollars."

Q. 72. On Exhibit 46 I find the following: "The Southern Express Company hereby guarantees the safe arrival of the articles named in this receipt, seizure or stoppage by civil or military force excepted, at ——, and in case of failure or damage by fire, water, or the perils of navigation or transportation to pay to —— or assigns the sum of —— dollars, or in proportion thereto as the amount of damages sustained bears to the value above stated. The same to be determined by three disinterested appraisers, if the parties cannot otherwise agree, it being understood that this guarantee shall not extend beyond twelve hours after the arrival of the goods at the above-named office or station." Please state what that means.

Defendant's counsel objects, as incompetent, and the witness should not be asked to explain a written paper.

Q. 73. State what that means.

A. That is the form of a receipt for insurance; the Southern Express Company will insure in that way.

Q. 74. Insure what?

A. Insure the safe arrival of the shipment that would be mentioned in the receipt on the other side.

Q. 75. If I bring a package of goods to the office of the Southern Express Company to be sent by it to Texarkana, or Little Rock, or De Soto, or Piedmont, is it in the course of business that the Southern Express Company will insure the safe arrival as in the blank form upon the back of Exhibit 46?

A. When requested so to do, it is.

Q. 76. It is your course of business?

Objected to, as incompetent. A. Yes, sir.

Q. 77. Plaintiff's counsel produces and shows to the witness a paper, marked Exhibit 41, and it being a paper which plaintiff's counsel proposes to substitute in the record for the original receipt, marked Exhibit 41, and filed yesterday, and having shown the witness what purports to be a true copy of *of* Exhibit 41, asks him to state what it is.

A. This is a true and correct copy of Exhibit 41, for which it is proposed to be substituted, made by myself.

913 By consent the paper referred to is filed in place of Exhibit 41, filed yesterday, and the original Exhibit 41 is withdrawn.

Plaintiff's counsel asks Col. Broadhead, attorney for the defendant, whether he has concluded to produce the account of the St. Louis, Iron Mountain & Southern Railroad Company of moneys paid to it by the Southern Express Company, since June, 1880, up to the present time.

Col. Broadhead states that he is not ready to answer what he will do.

Cross-examination by Col. **Broadhead**:

Cr.-Q. 1. This Exhibit, number 41, I understand you, is the statement of the charges paid to the St. Louis, Iron Mountain & Southern Railroad Company for what, Mr. Albright?

A. This Exhibit 41 is the receipted bill for money paid to the St.

Louis, Iron Mountain & Southern Railway Company for carriage of express freight over their road for the Southern Express Company, as testified to yesterday.

Cr.-Q. 2. That embraces what period of time?

A. It embraces more than one day. It embraces July 31st—part of July 31st, the whole of August 1st, and part of August 2nd, of shipments made from St. Louis.

Cr.-Q. 3. Does it show the items of express matter on which those payments were made? A. Yes, sir.

Cr.-Q. 4. I mean the goods.

A. It shows the packages, the number of packages, the weight, the consignee, and the destination of the packages.

Cr.-Q. 5. But does it show what the character of the property is?

A. It does in some instances, not all. For instance, there is three kegs of beer.

Cr.-Q. 6. What is the charge upon that?

A. Three kegs of beer to De Soto, thirty cents per one hundred pounds, ninety cents. We paid the St. Louis, Iron Mountain & Southern Railway Company ninety cents.

Cr.-Q. 7. I will just ask you in that connection whether they charge you for the return of the kegs.

A. I have not paid them myself. I have seen vouchers for the payment for the empty kegs returned.

Cr.-Q. 8. As a matter of fact now, they are not charging for empty packages returned, are they?

A. I could not answer that question, sir.

914 Cr.-Q. 9. Isn't that statement made by Mr. Aikin?

A. That statement is made on that exhibit, Exhibit number 43, I believe it is, but whether it is being carried out or not I can't tell.

Cr.-Q. 10. Exhibit number 42, Mr. Albright, to which you have referred, showing the rates per ton per mile claimed by the Iron Mountain Railroad Company, is taken from their tariff table, is it not? A. It is taken from the tariff table showing the rate per one hundred pounds.

Cr.-Q. 11. When was that tariff table issued—Exhibit 30, I believe it is? A. I don't remember the exact date. I think it was December 15th.

Cr.-Q. 12. The same tariff is in force now?

A. So far as we are concerned, it is; that is, they charge us according to it.

Cr.-Q. 13. And this is an estimate of yours according to the rates fixed by that tariff table and the distances?

A. The distances are gotten from the distance card of the Iron Mountain railroad as obtained by me from the ticket office and offered here as an exhibit yesterday.

Cr.-Q. 14. How does that tariff table compare with your own rates prior to the recision of the contract between the express company and the St. Louis, Iron Mountain and Southern Railroad Company?

Plaintiff's counsel objects to any inquiry into the plaintiff's rates, as illegal, incompetent, and irrelevant, the plaintiff's rates not being involved in this suit.

A. I can only speak from memory, as I have not one of the old tariffs here.

Cr.-Q. 15. What is your best recollection of it?

A. I think in a good many cases the rate is lower—on some a little lower.

Cr.-Q. 16. Than yours was?

A. Than ours was; that is, the rate per one hundred pounds.

Cr.-Q. 17. The rate per ton per mile would be lower in that event, wouldn't it?

A. I would say this, that the rate on packages of less than one hundred pounds, in a great many cases, our rate was less than that charged now by the St Louis, Iron Mountain and Southern railroad express department on parcels of under one hundred pounds.

915 Cr.-Q. 18. I will ask you now, Mr. Albright, in reference to Exhibit 42, which, I understand you, does not embrace the rates on packages under one hundred pounds.

A. No, sir; it does not.

Cr.-Q. 19. Now, I will ask you this question again in reference to the table you made out, Exhibit 42, as to how the rates upon which you have made your calculation of the rate per ton per mile compare with the rates of your own company prior to the recision of the contract between the St. Louis, Iron Mountain and Southern railroad and the Southern Express Company.

Objected to, as before.

A. I have just answered that question. I think on some a little lower; that the rate now is in some cases lower.

Cr.-Q. 20. The rate per ton per mile would be lower, then, wouldn't it. A. Yes, sir; it would be lower.

Cr.-Q. 21. This table of yours excluded packages under one hundred pounds, and also boxes, trunks, safes, etc., did it?

A. Yes, sir. It just took the rate per hundred pounds, single rate per one hundred pounds. It would not embrace the three rates or six rates.

Cr.-Q. 22. Does it embrace all points to which you make shipments on the line of the Iron Mountain railroad?

A. No, sir; it does not.

Cr.-Q. 23. What relative proportion of the points of shipment does it embrace?

A. Well, I didn't count up the whole number to see. I don't remember exactly how many there are on that sheet: I don't remember what proportion.

Cr.-Q. 24. You don't recollect that? A. I don't recollect.

Cr.-Q. 25. Is it one-half or one-third, about, to the best of your recollection?

A. I think, perhaps, one-third or more. I would not like to state positively what proportion, because I didn't make any such calculation.

Cr.-Q. 26. Well, did you select these purposely, or were these particular points taken out at random?

A. They were taken out at random.

Cr.-Q. 27. I think you stated that, in your opinion, the average value of a ton of ordinary express matter was from $1,000 to $1,500?

916 A. The average value, running through any period of time, running through a year, for instance, express freight, I valued at between $1,000 and $1,500. That, of course, is estimated value. It could be a great deal less, and could be a great deal more.

Cr.-Q. 28. Have you undertaken to make any calculation of this matter from your books or from the business of the Southern Express Company?

A. I have undertaken to make an estimate from observation—observing a ton of freight.

Cr.-Q. 29. That is rather an estimate than a calculation?

A. It is not an absolute calculation; an estimate based upon a knowledge of ten years, an experience of ten years in that very business of handling freight.

Cr.-Q. 30. Can you estimate the quantity of express matter, in value, shipped by the Southern Express Company in the course of a year? A. The tonnage or the value?

Cr.-Q. 31. Well, the value would be derived from the tonnage. A. Not absolutely correct. But you can form a pretty good estimate; a man who is familiar with the business—with the general run of express business—can do so.

Cr.-Q. 32. What would you say about the amount of tonnage? A. I have not made any calculation to show the amount of tonnage that has been carried in a year.

Cr.-Q. 33. I understand you have made no calculation as to the value of a ton, either; it is only an estimate. You have the same means of information in the one case as in the other?

A. I could determine, or the express company could determine, the amount that is carried, because they have got the weights.

Cr.-Q. 34. You haven't them with you? A. No, sir.

Cr.-Q. 35. I am trying to get an estimate from you just as you have made the estimate about the value per ton; you have the same means of information, and a little more, than you had in regard to the value?

A. I would not undertake to give a correct idea of the amount of tonnage carried by the Southern Express Company, of freight, because they carry a very large volume of freight.

Cr.-Q. 36. You can form no estimate at all? If you can't form an estimate, I will ask you to make a calculation of the 917 whole business of the company. You have undertaken to give the average value per ton. If you cannot say, I will ask you to go to the books and see.

A. The books are not accessible to me because our business extends over North Carolina, South Carolina, Alabama, Florida, and all over the Southern country.

Cr.-Q. 37. Upon what do you base the estimate of value of one thousand or fifteen hundred dollars; is it from the business of the Iron Mountain road?

A. On the Iron Mountain road more especially,

Cr.-Q. 38. Well, give the tonnage?

A. I could give the tonnage on the Iron Mountain road if wanted, that is, from St. Louis, but I think that one thousand to fifteen hundred dollars is the average value of a ton of freight; I think that is about a correct estimate from a knowledge obtained from ten years' experience in the business in handling freights.

Cr.-Q. 39. I should think, Mr. Albright, you would be as capable of judging of the tonnage as of the value. I don't see how you can arrive at the one and not at the other. You think you cannot state approximately the amount of tonnage?

A. No, sir; I could not. I would not undertake it, because I never gave the subject thought.

Cr.-Q. 40. Is it your business to make an estimate of the losses sustained by the company in the course of transportation?

A. No, sir.

Cr.-Q. 41. Who keeps an estimate of that? A. Our auditor.

Cr.-Q. 42. Do you know anything about it yourself?

A. Why, I know what little claims I have paid here in St. Louis that is all; I pay them here.

Cr.-Q. 43. Did you undertake to state in your examination-in-chief the amount of losses? A. No, I think not.

Cr.-Q. 44. You said you would insure at one-eighth of one per cent. per ton per mile?

A. We will insure at one-eighth of one per cent. on the value.

Cr.-Q. 45. I am trying to get at some things in order to see whether you are capable of forming an estimate upon that point; you do not know anything about the amount of tonnage, and don't know anything about the amount of losses, do you?

A. Well, my answer as to the insurance rate is, we have the rate published and given to us to charge it.

918 Cr.-Q. 46. What insurance rate—by the insurance companies?

A. By our own company, the Southern Express Company.

Cr.-Q. 47. I am asking you what you know, not what anybody else knows about this thing; I want to find out if you know anything about it yourself.

A. I know we will insure it at that rate—we do it.

Cr.-Q. 48. That is, the company insures, but you don't know whether the company insures at a right valuation or not, and you can't know it without you know something about the losses?

A. My answer was this, I recollect, that we would insure—the Southern Express Company would insure—the safe arrival of freight for one-eighth of one per cent. charge to the shipper on a given amount.

Cr.-Q. 49. What would be the basis of an estimate of that kind, made for insurance?

A. Well, I could not say what they base the rate on. I presume on the losses sustained, but I don't know; I am not in a position to know.

Cr.-Q. 50. Do you ever undertake to insure your goods in the fire insurance companies? A. I haven't.

Cr.-Q. 51. I mean does the Southern Express Company do it?

A. Not to my knowledge.

Cr.-Q. 52. You don't know what their rates of insurance are?

A. No, sir, I have never insured anything, or been charged anything for insurance.

Cr.-Q. 53. And you would not know the basis of insurance at the rate of one-eighth of one per cent. or any other rate?

A. I only know that is the rate given us by our officers to charge.

Cr.-Q. 54. The fact is, you know nothing about it; you don't know what would be a reasonable insurance?

A. I presume that would be a very reasonable insurance, or they would not tell us to charge it.

Cr.-Q. 55. In other words you presume the officers of the Southern Express Company are very skillful men; is that it?

A. I presume they know what they are doing.

Cr.-Q. 56. The amount paid as set forth in Exhibit number 36, which has been called to your attention, was in accordance with the tariff table of the Iron Mountain Railroad Company, was it?

919 A. Take that first item, St. Louis to Columbus, Kentucky; one hundred and ninety-six miles, weight one hundred and thirty pounds. The rate according to their tariff table is one dollar per one hundred pounds; they have charged us one fifty for it, which is more than one dollar per one hundred pounds.

Cr.-Q. 57. And that is the amount that you have paid?

A. Paid that—one fifty.

Cr.-Q. 58. I notice that upon Exhibit number 47 are printed the words "Not negotiable;" is that upon all papers of the kind that are issued by the Southern Express Company?

A. In St. Lous it ought to be; the instructions are to have it stamped on all of them.

Cr. Q. 59. Do you mean to say by that, that this bill of lading isn't a negotiable bill of lading?

A. Yes, sir; it is not a negotiable bill of lading; it says so right across the face.

Signature waived.

By consent, adjourned until February 23, 1881.

St. Louis, *February* 23, 1881.

Parties met pursuant to adjournment.

John A. Clark, being duly sworn, testified as follows:

Direct examination by S. T. Glover, Esq.:

Q. 1. Mr. Clark, where do you reside?

A. In Louisville, sir.

Q. 2. How long have you resided there?

A. Since September, 1879, September 27, 1879.

Q. 3. What is your business, Mr. Clark?

A. Auditor in the express department of four railroads; do you want the details?

Q. 4. No. We will speak of only one; the Louisville and Nashville railroad. How long have you been connected with the express department of the Louisville & Nashville railroad? A. Since its commencement; from May 1st, 1880.

Q. 5. What time did that road begin to do its express business? A. May 1st, 1880.

Q. 6. What acquaintance have you had with the express business? [A.] I have audited all the accounts of it.

Q. 7. But I mean express business generally?

A. Well, I was connected with the Adams Express Company.

920 Q. 8. How long? A. For I do not remember—four and a half or five years; call it five years; I think it was.

Q. 9. Well, with any other company?

A. The Ohio & Mississippi Company Railroad Express.

Q. 10. For how long? A. Two years.

Q. 11. Well, were you connected with express business in any other manner? A. I was in the Union Express Company.

Q. 12. How long were you in that?

A. From September 22nd, to May 1st, as the Union Express Company.

Q. 13. Last year? A. From September 22nd, 1879, to May 1st, 1880; I handled all their business from the commencement to the close.

Q. 14. So, that for seven or eight years you have had such acquaintance? A. Yes, sir.

Q. 15. Have you had any acquaintance, other than as connected with your express companies? A. No, sir.

Q. 16. Mr. Clark, what are the accessorial services which are frequently spoken of here, in connection with the conducting of express business on railroads; what do you mean by that?

A. My definition of it is that it is all the services, other than the motive power and the car room in the cars.

Q. 17. The locomotion?

A. The locomotion, the motive power.

Q. 18. I wish to ask you whether you can state, from your experience in the conduct of express business, assuming that a ton of freight—express freight—is collected about a city by an express company, from one or more consignors, delivered by the express company to the railroad for transportation, or in charge of the express company's messenger, the freight transported on the railroad, in the care of the messenger of the express company, and at the end of the railroad transportation delivered by the express company to the consignees at their residences; which costs the most, the service which has been rendered in the case of that ton of freight by the express company and its employees, or the services rendered by the railroad company in that case, and its employees?

A. I should say, the services rendered by the express company.

921 Q. 19. Will you state, if you please, to the examiner which costs the most, transportation of freight by wagons and teams and drivers or transportation by railroad?

A. Transportation by wagons and teams.

Q. 20. Which do you say costs the most?

A. Transportation by teams.

Q. 21. What can you, according to the customary charges, haul a package or box or sack containing one hundred pounds of merchandise carried a mile for by wagon; in a city, I mean? A. You are talking of one single package?

Q. 22. I am talking of one hundred pounds of freight.

A. If I had nothing else in the load the lowest charge in any city of any size would be fifty cents.

Q. 23. Would you make a deduction for a number of packages? A. Oh, you can get a number of packages at a less price than one.

Q. 24. Well, fix the price at something, if you can.

A. Well, a limited price would be twenty-five cents.

Q. 25. Will you tell the examiner what it ordinarily costs a railroad to transport a ton of freight a mile?

A. I think, sir, a cent a ton per mile is what they estimate as good pay.

Q. 26. Can you tell from your experience and acquaintance with the conduction of express business what it costs an express company to conduct its express business over a railroad; give the per cent. of its gross incomes, which, according to your knowledge and experience, if you are able to state, it costs the express company to do its business—what it actually expends in the doing of its business; that is, what per cent. of its gross income?

A. You use the term "express companies;" do you want me to include the costs of transportation and accessorial services?

Q. 27. I mean what part of its gross incomes does its accessorial services amount to?

A. Outside of that? That is what I want to get at, whether you wish me to include the amount the express company pays to the railroad company for carrying it, or do you want the accessorial services merely?

922 Q. 28. The accessorial services merely.

A. It is between sixty and sixty-five per cent.

Q. 29. What do you mean by that?

A. Let me say, mind you, that I am not basing that on the experience of the express companies here, but on those that we have got.

Q. 30. Express companies where?

A. At Louisville, the Louisville and Nashville Express; we go on the supposition that we can operate it just as cheap as the express companies can; every bit.

Q. 31. When I speak of an express company I mean anybody doing an express business; what do you mean by sixty to sixty-five per cent.?

Witness here refers to a paper.

Defendant's counsel objects to witness consulting the paper.

WITNESS: This paper is an abstract of my accounts.

Q. 32. What did you mean when you stated it costs sixty to sixty-five per cent. of the gross incomes? Explain what you mean by that.

A. Well, the gross income is derived from the transportation from all sources. Out of that they pay between sixty and sixty-five per cent.

Q. 33. Who pays? A. Express department pays from sixty to sixty-five per cent. for services of all kinds.

Q. 34. Now, I will ask you what you know of the conduction of an express business by the Louisville and Nashville railroad? A. I have kept the accounts since it opened its express department.

Q. 35. When you stated that sixty to sixty-five per cent. included the services of all kinds, you did not mean the railroad services?

A. Not any transportation service at all. I said that.

Q. 36. You mean the services rendered by the person doing the express business? A. Yes, sir.

Plaintiff's counsel produces and shows to the witness a paper with this caption: "Louisville and Nashville Railroad Company, in account with express department of Louisville and Nashville Railroad Company," which is marked Exhibit 48.

Q. 37. What is that paper?

923 A. It is the abstract of the statements rendered from month to month to the Louisville and Nashville Railroad Company.

Q. 38. What does it show?

A. It shows the gross earnings, the disbursements, and the net earnings.

Q. 39. Of what?

A. Of the operation of the express department of the Louisville and Nashville railroad.

Q. 40. I find here "By receipts from operation of express department May, 1880, $27,169.68, and running down through June, July, August, September, October, November, and December, I find the amounts extended here against each of the months, that of December being $40,010.13, and the total for the eight months being $214,285.88. I will ask you what you know of these entries on the account under the months of May, June, July, August, September, October, November, and December? A. I know them to be a correct statement of the gross earnings of the express department during the months named.

Q. 41. You are the auditor?

A. Yes, sir.

Q. 42. What is the amount of the gross earnings?

A. $214,285.88.

Q. 43. Now, immediately underneath that I find the following: Disbursements by the express department: 1st. For transportation paid other railroads and steamboats. And under that heading, May, 1880, $2,344.99; June, $660.60; July, $668.09; August, $676.59; September, $716.05; October, $815.85; November, $775.11; December, $870.77; total for eight months, $7,523.05; what do you know about those items of disbursements?

A. I know that they were the amounts actually paid out to railroads, steamboats, and I expect I should have included one or two little stage lines in there. We have got one or two little stage lines down in Kentucky.

Q. 44. Explain how these payments were made to other railroads and steamboats?

A. Upon vouchers, the receipt of which I have in my office.

Q. 45. How did it happen that the express department of the Louisville & Nashville railroad owed anything to other railroads?

A. For their services in transportation. Railroads other than those in Nashville. I can explain if you wish.

Q. 46. Explain.

924 A. The Union Express Company contracted with the Paducah and Elizabethtown railroad to do the express business over the Paducah and Elizabethtown railroad from February 20th, 1880, the contract to run to February 20th, 1881. In April, to date from May 1st, the Union Express sold out to the Louisville and Nashville railroad, who assumed all its contracts and assets and liabilities, among which was this contract with the Paducah and Elizabethtown railroad to do the express business over its line at a certain amount per month, $600, expiring on the 20th of February, 1881. They assumed that. Since that date the Louisville and Nashville express department has paid so much per month to the Paducah and Elizabethtown.

Q. 47. On shipments beyond its line?

A. Yes, sir.

Q. 48. Revenues arising from those shipments beyond the terminus of your road are included in the account?

A. It is included in the gross earnings.

Q. 49. What express business you did beyond the terminus of your road over other roads and what railroads you paid are both included in this account?

A. We have to charge it against that revenue. The revenue is included in there and the disbursements charged against it.

Q. 50. Well, now, I find here under the head of disbusements "Office salaries" in the months of May, June, July, August, September, October, November, and December; what does that mean?

A. It means the amount paid to agents, clerks, drivers, and porters.

Q. 51. What do you know about that?

A. I know those to be the correct figures that were paid out for this purpose.

Q. 52. Now, I come to disbursements—"Office expenses;" what does that mean—for May, June, July, August, September, October, November, and December; total eight months, $12,130.54? A. That comprises office rent, taxes, insurance, and incidental expenses at the different offices.

Q. 53. Incurred by the express department.

A. Yes, sir; all incurred by the express department.

Q. 54. What do you know about the correctness of these entries?

A. I know them to be correct by vouchers on file in our office.

925 Q. 55. Stable expenses for the same months, $8,987.69, being divided into items per month, beginning with May and ending with December; what do you know about the stable expenses paid for the express department of the Louisville & Nashville railroad, and there stated as a part of the account?

A. Well, sir, I know them to be correct; that comprises the boarding of horses, the feed we have to buy, and all that sort of thing.

Q. 56. Stable rent also?

A. Stable rent, salaries of hostlers, etc.

Q. 57. General line salaries is the next item. What is the meaning of that?

A. That is the salaries paid for the general management of the business including the messengers. Those amounts comprise the salary of the general manager, general superintendent in the office, the auditor's office, and the messenger's services.

Q. 58. What do you know about the paying of them?

A. I know them to be correct, sir, as the items are shown there. I have the receipts in my office.

Q. 59. "General line expenses" is the next item, $1,742.08. What do you know about that?

A. That includes the rent of the treasurer's and auditor's office, the manager's office, and the traveling expenses of the officers, the repairs of the messenger's safes and boxes, and expenses that cannot properly be charged to any other account.

Q. 60. What do you know about the justice of those charges and the payment of them? A. I know them to be correct.

Q. 61. Do you know whether they were paid?

A. I know they were paid.

Q. 62. The next is "printing and stationery," $11,528.99. What do you know about that?

A. That item comprises all the printing and the stationery necessary to conduct the business. There is not anything in there that is chargeable to any other account. It includes books, inks, etc.

Q. 63. Do you know whether those charges are just?

A. They are.

Q. 64. Do you know whether they were paid?

A. They were paid.

926 Q. 65. Well, now, here is an item entitled "personal property," aggregate $13,784, and that is put down as part of the expenses or disbursements, and is to come out of the gross amount of incomes; now state what that is?

A. We have purchased in the eight months $13,784 worth of items which we have charged to personal property account, on which my estimate is that we will have to deduct 25 per cent. for wear and tear and loss in one way or another.

Q. 66. The present value is $13,000 and odd less the wear and tear? A. Yes, sir.

Q. 67. Three-fourths of the original value?

A. Yes, sir; about that.

Q. 68. During this time—that is, from the month of May to December, inclusive—I find charged an item of loss and damage of $1,483.82; state what that is?

A. That is for damage and loss, just as it is named there; damage to or loss of articles shipped by our express department on which we have had to pay.

Q. 69. During those eight months? A. Yes, sir.

Q. 70. Well, the next item is recapitulation. It is not necessary to ask you anything about that; it speaks for itself. Please state what were the net proceeds of the transactions of the express department of the Louisville and Nashville railroad during the months covered by this account?

A. The net proceeds were $72,482.60.

Q. 61. After defraying all expenses and charges?

A. All expenses and charges. That is the net amount we have turned over to the railroad.

Q. 72. The aggregate disbursements—the amount actually paid out—was how much? A. $141,803.28.

Q. 73. Ordinarily, Mr. Clark, what instrumentalities has a railroad for doing express business?

A. None outside of furnishing motive power, room in cars, and hauling from one station to another from the depot.

Q. 74. In case it determines to do an express business, or attempts to do it, is there anything which an express company doing business over its road is required to do that the railroad is not required to do in case it determines to do that business?

A. There is nothing in the freight department that it can utilize unless it would be office furniture, and perhaps the ser-
927 vices of the agent, where they have railroad agents that can attend to the express business as well.

Q. 75. Assuming that a road has not done an express business up to a certain date; that on that date it attempts to do an express business, what provision does it have to make now to enter upon the new business?

A. It has to provide itself in the first place with an equipment such as an express department uses, and such as would be necessary in the way of safes, etc. Also to provide for the payment of different employees, and in fact nearly all the expenses that an express company incurs.

Q. 76. Is there anything which an express company needs in the transaction of its business over a railroad which the railroad is not required also to provide itself with, in case it does the business?

A. No, sir; not to conduct the business properly.

Q. 77. Aside from the Louisville and Nashville railroad, are you able to state what amounts assuming an average railroad and an express company doing business over that railroad, what per cent. of its gross income the express company would necessarily have to expend to conduct its business?

A. Do you want me to include in that the amount they pay the railroad or outside of the transportation?

Q. 78. Outside of what the railroad does. What you would have to expend—what its own expenses are leaving out what the railroad does, that is what I want to know?

A. I think, sir, our department is very nearly a good average on that. I do not see that they could operate it much cheaper than we do; that is, with an economical management.

Q. 79. You stated that you had been in the Adams Express, and had had some experience there; I wanted to know whether you learned anything there different from what you have spoken of here, in regard to your own company, the Louisville and Nashville express department?

A. I have not in the main. You see the Adams Express, or any other company that has extended lines, may lose very largely on one line or branch of a particular railroad, and the earnings from the matter carried will have to swell the revenue perhaps of some main line, so that it is hard sometimes to tell how to strike an average on that.

928 Q. 80. I was calling for average conditions.

A. It would be near sixty per cent.

Q. 81. Of gross earnings?

A. I say near that; it would be hard to tell exactly. They may not make any profit sometimes on a particular line.

Q. 82. Have you any knowledge with what care or prudence the transactions of the express department of the Louisville & Nashville railroad business was conducted?

A. I think, sir, it was conducted economically, considering the location and the risks we run.

Q. 83. Through what extent of country or miles of railroad did the Louisville & Nashville railroad conduct its business; in other words, how long is that road?

A. The actual territory of the Louisville & Nashville railroad that we operated was something over 2,100 miles; I do not know exactly.

Q. 84. What sort of country did it operate through as to populousness and wealth? A. In the main, a poor country.

Q. 85. Does it extend to New Orleans? A. Yes, sir.

Q. 86. Begin at Louisville? A. Yes, sir.

Q. 87. And run south in what direction?

A. South and southwest to New Orleans and on to Pensacola.

Plaintiff's counsel puts Exhibit 48 in evidence, and defendant objects, that it is incompetent and irrelevant.

Cross-examination by Col. **Broadhead**:

Cr.-Q. 1. How long has the Louisville and Nashville road been doing its own business? A. From May 1st, sir, 1880.

Cr.-Q. 2. Who did the express business on that line before?

A. The Union Express Company. That is, on the line that is controlled by the Louisville and Nashville. In the meantime they have controlled other lines.

Cr.-Q. 3. Were you connected with the Union Express Company? A. Yes, sir.

Cr.-Q. 4. For how long?

A. From September 22, 1879, to the date it closed. I closed up its books.

Cr.-Q. 5. Where was the office and the principal businss of that company? A. At Louisville.

Cr.-Q. 6. Did it have any connection with the Louisville and Nashville railroad?

929 A. I believe, sir, the Louisville and Nashville was a stockholder in it.

Cr.-Q. 7. What became of the property and officers of the Union Express Company when the Louisville and Nashville road commenced doing its own business?

A. Sold to the Louisville and Nashville Railroad Company.

Cr.-Q. 8. You are using, then, the same offices and the same property that was used by the Union Express Company, now?

A. Yes, sir; that is, to a great extent, we are; we sold some of it.

Cr.-Q. 9. Have there been any changes in the offices of the railroad express company from those of the Union Express Company? A. Yes, sir; I was not auditor for one; of the Union Express Company, I served as book-keeper.

Cr.-Q. 10. Do any of the officers of the Louisville and Nashville express department perform any services for the Louisville and Nashville railroad?

A. Oh, yes; the general manager of the Louisville and Nashville express department or bureau was the president of the Union Express Company; the general superintendent of the Union Express Company is general superintendent of the Louisville and Nashville express bureau; the treasurer and secretary of the Union Express Company is now the treasurer of the Louisville and Nashville Express Company, and I was appointed auditor of the Louisville and Nashville express department.

Cr.-Q. 11. I do not know that you fully understand me; do any of the present officers doing the business of the express of the Louisville and Nashville railroad perform any services for the railroad itself? A. Oh, no, sir.

Cr.-Q. 12. They are separate entirely?

A. Yes, sir; up to the 1st of January, Mr. Guthrie—oh, yes, Mr. Guthrie was a director of the Louisville and Nashville Railroad Company, and was the general manager of the express bureau of that road up to December 1st.

Cr.-Q. 13. During part of the period of time covered by this account?

A. Yes, sir; that is all the connection, I believe, that any of them have had; I know that Mr. Guthrie was a director of *of* the railroad company and the general manager of the express department of the railroad at the same time.

930 Cr.-Q. 14. Did you make out this account, Exhibit 48? A. Yes, sir.

Cr.-Q. 15. Where did you make it out?

A. I copied it here from a statement that I had in my pocket that I made out at home, in Louisville.

Cr.-Q. 16. How did you make it out?

A. It was a transcript of books that I have in my office; I have an impression copy of the statement rendered to the general superintendent; I have the impression copy here from which this exhibit is copied.

Cr.-Q. 17. This statement was rendered by yourself?

A. Yes, sir.

Cr.-Q. 18. What are your means of making out that account; what vouchers have you?

A. We have the voucher for everything that is included here.

Cr.-Q. 19. That is very general; what papers have you?

A. We have the vouchers and our account books in my office; all the account books of the express department are in my office, of course.

Cr.-Q. 20. Under the head of disbursements in this account, did you make any of those payments yourself?

A. No, sir; they were made by the treasurer; that is, those that are paid at Louisville are paid by our treasurer; we allow our agents to pay out money at the agencies on vouchers provided by the general superintendent; we will accept them as cash in their accounts, or in lieu of cash.

Cr.-Q. 21. Where are those vouchers?

A. On file in my office.

Cr.-Q. 22. They are all at a distance, are they?

A. Yes, sir; I say all; I suppose they are all packed away there.

Cr.-Q. 23. Where is your office?

A. In Louisville, Kentucky.

Cr.-Q. 24. This account is intended to exhibit the gross income and disbursements of the express department of the Louisville and Nashville Railroad Company for a period of eight months, ending in December, 1880, is it? A. Yes, sir.

Cr.-Q. 25. The total amounts of receipts, the gross receipts for eight months, is put down at $214,285.88, for the operation of the express department? A. Yes, sir.

931 Cr.-Q. 26. That is, the receipts you got from shippers of express matter over that line, is it?

A. Yes, sir; over the lines operated.

Cr.-Q. 27. "Transportation." Does that include transportation on all forwarding lines?

A. It includes the net earnings or earnings due, or rather earned, by the Louisville and Nashville Railroad Company express department; it don't include the earnings of any other express department, because they are taken out; that is, those that we make through bills with; this amount is the Louisville and Nashville's share of all earnings on all business transacted by it.

Cr.-Q. 28. Suppose you want to ship an article of express matter from Louisville to New Orleans, over what line of road do you send it?

A. Do you mean the different divisions? They are all under the control of the Louisville and Nashville railroad. There is a direct line from Louisville to New Orleans.

Cr.-Q. 29. Then speak of some other point of which they have not the control; take Mobile, have they connection with Mobile? A. Yes, sir; right straight through.

Cr.-Q. 30. Little Rock, Arkansas?

A. Our custom has been to make a through bill from Louisville to Little Rock, and charge that to the St. Louis & Iron Mountain express, we call it, or the Iron Mountain, Memphis and Little Rock, but we call it the Iron Mountain, based on our rate to Memphis, and upon their rate from Memphis to Little Rock.

Cr.-Q. 31. Who settles that difference?

A. It is settled between the auditors.

Cr.-Q. 32. Between the auditors of the different companies?

A. Yes, sir.

Cr.-Q. 33. When is that settlement made?

A. During the month following the month that the way-bill is made in; some time during the following month, between the first and the twentieth.

Cr.-Q. 34. This result, then, of 214,000 and odd dollars, is that arrived at by deducting the cost of transportation on all connecting lines?

A. Yes, sir; except what we pay over the Paducah and Eliz-
932 abethtown; we pay them $600 per month for the transpor-
tation of freight, as I have already explained; and we paid a
small sum to steamboats, etc.

Cr.-Q. 35. This is then the whole amount of cash receipts for transportation as coming directly to the express department of the Louisville and Nashville railroad?

A. The whole transportation earned. By the way, I may not have yet received the cash on all of that, but it is due from agents; that sum is either received or due.

Cr.-Q. 36. Now, in regard to the disbursements during this period of time, did the Southern Express Company do business on the Louisville and Nashville railroad?

A. On a part of its lines; yes, sir; I believe they operated over the New Orleans route, the Pensacola route, and the Mobile route, and the Adams operated with this St. Louis division.

Cr.-Q. 37. How were their accounts settled?

A. They were settled directly with the comptroller of the railroad.

Cr.-Q. 38. Whatever earnings or charges the Louisville and Nashville Railroad Company have received from the Southern Express Company are not embraced in the receipts?

A. No, sir.

Cr.-Q. 39. Now, the first items of disbursements is to transportation paid over railroads and steamboats?

A. That should have included stages also for one or two months. We have a little stage line down there in Kentucky; but is is transportation paid out to all companies other than the Louisville and

Nashville Railroad Company; we don't pay them anything, of course.

Cr.-Q. 40. During this period of time, was the Adams Express Company doing express business over the Louisville & Nashville railroad? A. Over the St. Louis Division, sir.

Cr.-Q. 41. That is the St. Louis and Southeastern Division?

A. Yes, sir.

Cr.-Q. 42. Only that portion?

A. That is all, I believe, over that division.

Cr.-Q. 43. Well, you were doing business over it also?

A. Yes, sir; part of that time. Part of that time we were not. I think we came on in the fall—October, I think it was.

933 Cr.-Q. 44. Then there were two other express companies doing business over portions of the line of the Louisville and Nashville railroad during the period of time mentioned in this account? A. Yes, sir.

Cr.-Q. 45. That is during the whole of this period of time?

A. Yes, sir. They never went off the roads at all when we went on.

Cr.-Q. 46. Now, under the head of "office salaries," I see for each month you have the amounts set down in this account under the head of disbursements: For May, $6,656.52. Please state what offices you refer to; what official salaries.

A. The first month there I should explain. You see, the Union Express Company had the contract over the Louisville, New Albany and Chicago railroad, from Louisville to Green Castle, and on the Louisville, Cincinnati and Lexington road, from Lexington to Cincinnati. The Union Express Company sold out, to take effect on the 30th day of April, or rather on May first; on that day the Louisville and Nashville railroad was to commence operating its express. For two weeks in May the Louisville and Nashville received the earnings over those lines and paid the expenses as well for operating the express until the other companies had organized their own express department and commenced to operate there, which, I think, was the 15th day of May; so that for two weeks in the month of May is included the receipts and disbursements of the Louisville and Nashville and two other roads.

Cr.-Q. 47. The whole amount of the moneys paid out during that time is not chargeable to the disbursement, is it?

A. Yes, it is, sir; because the receipts from this same source is included there also.

Cr.-Q. 48. What offices do you allude to; what salaries?

A. What was paid agents and clerks at agencies.

Cr.-Q. 49. Did you include the agency in Louisville?

A. Yes, sir.

Cr.-Q. 50. And everywhere else on the line of the road?

A. Yes, sir; all salaries paid to agents, clerks, and porters, and drivers, too, were included.

Cr.-Q. 51. It includes, then, all employees connected with what you call the accessorial service?

A. No, sir; it don't include all those, because there is another division made; all this messenger service is not included in that.

934 Cr.-Q. 52. But it includes all those that are actively instrumental in getting express matter? A. Yes, sir.

Cr.-Q. 53. During this time you had to compete with those other companies that you have spoken of?

A. Yes, sir; we competed with them for business over the lines that they operated jointly.

Cr.-Q. 54. Did not that tend to increase the expense of your employees, the number to be employed?

A. No, sir; I think not.

Cr.-Q. 55. Could you have got the same amount of matter for transportation with fewer employees if there had been no competition on the part of those other companies?

A. A great deal more, sir; because we could have handled the business, I think—nearly all, if not quite all, the business—that the other companies were doing with the same force that we operated all those lines. Of course, there would have been a slight increase in the expenses, but very slight.

Cr.-Q. 56. Didn't you require additional men to solicit express matter for transportation on account of this competition?

A. Very few; we had one solicitor in Louisville, and I believe we paid one man in St. Louis, and, so far as my recollection goes, that is about all the extra expense we went to by way of soliciting business; and that we would have had, had there been no competition upon that line.

Cr.-Q. 57. Is any express matter brought to your office by the owners and shippers themselves? A. Yes, sir.

Cr.-Q. 58. Would not that be done at all the small stations in the absence of competition by the shippers themselves?

A. Yes, sir; at some stations we did not have wagons. When the town was too small to have delivery services, the officers would be at the depot. In those small places they would bring the matter to the office, wherever it was located.

Cr.-Q. 59. The "office expenses" you refer to here; what are they?

A. That includes rent, insurance, taxes, and incidental expenses in conducting the business of the different offices.

Cr.-Q. 60. You mean insurance on the building, or insurance on the express matter in transportation?

A. Insurance on buildings, that is all; and on personal property, whatever we may have at any particular point; and also, all that used in the express department.

935 Cr.-Q. 61. "Stable expenses," you say, included feed for horses, wagons, etc.

A. It includes the boarding of horses. At some points we hire our horses fed; we board them at livery stables; board of the horses and keeping of the wagons; and at some places we have a stable, and then it includes stable rent, hostlers, gas, if we have gas in them; water at the stables, and all expenses incurred at the stables, or in connection with the hauling, except drivers, etc. Everything of the kind is charged to stable expenses.

Cr.-Q. 62. You say that you were an officer of the old Union Company. A. No, sir; I was not an officer of the Union Express Company; I was the bookkeeper. I opened the books of the Union Express Company from the beginning; started out the first books that were kept.

Cr.-Q. 63. Do you know whether the number of wagons and employees in the express department is increased from what it was when the Union Express Company was operating, or the Southern Express? A. When the Southern Express Company operated that line, do you say?

Cr.-Q. 64. Yes, sir.

A. I cannot tell that; I do not know what they had.

Cr.-Q. 65. Do you know whether you delivered to more stations on the road than the Southern Express Company?

A. No, sir; I don't think we did. I think we had about the same number of offices, only we conducted our business a little different. I think they had stations wherever we had.

Cr.-Q. 66. What do you say you mean by the "general line expenses," in this account?

A. General line expenses are expenses that cannot be charged to any particular office; cannot be located. That includes the rent of the auditor's, treasurer's, and general superintendent's office. We divided those expenses. We charged to the Louisville local office the lower floor; up stairs, that is the treasurer's office, and the general superintendent's and my own office, which is on the third floor. That expense was charged to the general line.

Cr.-Q. 67. Are those amounts for money actually paid out, or only estimated by you? A. They were the actual statements of moneys paid out per our books.

936 Cr.-Q. 68. Do you know about the amount paid out for printing and stationery; how that amount, as exhibited in this account, compares with the amount paid by the other companies—the Southern Express Company, for instance?

A. No, sir; I have no idea. I do not know what their expenses were.

Cr.-Q. 69. What kind of printing is it?

A. That includes the printing of all our blanks and books. It includes sealing-wax, etc. In other words, it includes all supplies that we cannot charge to office expenses, stable expenses, general line expenses, or personal property. The list would be a long one to tell of all it includes.

Cr.-Q. 70. It includes the printing of stationery?

A. No, sir; not for a local office. If an office advertises, we charge that to office expenses at that particular point. If it is an advertisement of the company, we charge it to general line expenses.

Cr.-Q. 71. Did you find it necessary to advertise largely at the commencement of this company?

A. No, sir; not considering the magnitude of the business, we advertised very little.

Cr.-Q. 72. You made efforts to let the public know that the Louisville & Nashville railroad was doing its own express business?

A. Yes, sir; wherever we opened a new route we advertised it, a we did in St. Louis.

Cr.-Q. 73. That would cost considerable, wouldn't it?

A. Yes: I do not know what you call considerable. Yes. Yes, the St. Louis newspapers charge a pretty round sum.

Cr.-Q. 74. What I mean is, that adds to the expenses of a new business? A. Yes sir.

Cr.-Q. 75. Which would not legitimately belong to the business, if well established? A. No, sir.

Cr.-Q. 76. Now, this heading of personal property; I don't think I understand your explanation of. You have given, as the total for eight months of personal property, which is chargeable to the gross earnings of the road, $13,784.00; what was that?

A. In our personal property we included horses, wagons, harness, etc. It would be too long a list to enumerate all that
937 is included in personal property, but everything that we
think will be on hand and bring anything on the value at the expiration of a year, something that is not wasted, something that is not perishable, trunks and scales and office furniture.

Mr. **Glover**: Boxes and safes?

A. Boxes and safes, harness, wagons, and horses.

Cr.-Q. 77. Col. **Broadhead**: Anything that is not perishable? A. Anything that is not perishable. Something, that in case we wanted to sell out, we could get something out of. I included in our personal accounts signs and sign-boards, in order to keep the run of them.

Cr.-Q. 78. You have put down the expenditures made by the company for those articles of personal property, and then you deduct what?

A. I have not deducted anything in that case. That is the actual cost of those. We have got that personal property on hand; that does not figure in the net earnings at all. In addition to those net earnings, we have got so much personal property.

Cr.-Q. 79. This is what you paid out for personal property during eight months? A. Yes, sir; and what we have on hand.

Cr.-Q. 80. I do not understand how you make that a charge upon the gross earnings?

A. That is a transcript of our statement to the Louisville and Nashville Railroad Company, sir, that we charge against the gross earnings. Disbursements of every kind and character.

Cr.-Q. 81. But you have this property on hand?

A. Yes, sir; but perhaps not at that value.

Cr.-Q. 82. In ascertaining the net balance which you put down here at $72,482.60. Do you deduct this item of $13,784.00? A. No, sir, it is not deducted—yes, it is deducted from the gross earnings to get the $72,000 and odd.

Cr.-Q. 83. You mean then, that when you buy property it ought to be charged against the gross earnings for the purpose of ascertaining what the net earnings of the business were?

A. Yes, sir.

Cr.-Q. 84. If you had built two or three express cars, what is deducted? The cost of the cars in order to ascertain the net earnings?

A. They should be, sir; or a deduction made, because the
938 very month they are built and put in service they decrease
in value, you cannot tell how much. In this case we show the net earnings were $72,000 and some odd. If we were going to sell out to-day, we would add to that whatever we could get for what we had on hand. Our franchises and everything.

Cr.-Q. 85. Can you form any estimate at the present time, at the end of eight months, how much it has depreciated?

A. It is very hard to do that, sir, the Southern Express Company have contracted to take certain property off our hands, no matter how old, and agreed to give us voucher cost. On others that they may want to use they will take the voucher cost and deduct twenty per cent. Then there is a great deal that they will not care to use at all, but the greater part of the personal property is such that they are going to take it off our hands at the voucher cost. That includes safes, wagons, horses, etc.

Cr.-Q. 86. Then you get your money back?

A. We get our money back for these certain articles.

Cr.-Q. 87. And if the business of the Louisville and Nashville Express Company were to be settled up to-day, or at the end of the month of December, after running eight months—you would still have this property—the amount that this property would bring—to add to the net earnings? A. Yes, sir.

Cr.-Q. 88. That includes wagons, horses, desks, safes, and articles of that kind used in your business? A. Yes, sir.

Cr.-Q. 89. Do you know anything about the value of the horses?

A. Well, it is very hard to fix that. I do not believe that I can tell. Take a horse that we pay $200 for, it is possible we would not get over $25 or $30 for it, and we might get $175.

Cr.-Q. 90. And you might get $250?

A. Possibly might, yes, sir.

Cr.-Q. 91. How much do you suppose that a horse would decrease in value that was bought in May last, and used in your business up to the end of December?

A. Twenty-five per cent.

Cr.-Q. 92. You would knock off twenty-five per cent?

A. Yes, sir; but we are selling them at what they really cost us. If I was going to buy I do not think I would give within twenty-five per cent. of what they cost.

939 Cr.-Q. 93. How about wagons, safes, desks, etc.?

A. That would depend a good deal on circumstances. If I was making a contract to buy, I would want to see each of the articles.

Cr.-Q. 94. Of course; but we want to get your opinion?

A. Twenty-five per cent. on wagons, harness, and horses, I think, would be about fair. Our wagons are in good condition, because we keep them repaired, and charge that to stable expenses.

Cr.-Q. 95. Well, "loss and damage," you itemize here; what does that consist of; what is the nature of that loss or damage? A. That is for articles that we lost, and the damage to articles received.

Cr.-Q. 96. That you had to pay out in cash? A. Yes, sir.

Cr.-Q. 97. I see here for the month of November $1,241.18?

A. That was in compromise to some damage to fruit on the Louisville and Nashville railroad; if we had been operating as a separate and distinct company, we would have charged that all to the railroad, or nearly all of it; that loss was caused by the negligence of the railroad company, and if we had been operating as a separate express company, we would have charged it directly to the railroad, and made them pay for it; I think it was about $1,400—between $1,300 and $1,400—we paid out for loss that was caused by the negligence of the Louisville and Nashville Railroad Company.

Cr.-Q. 98. For which the railroad company was chargeable?

A. Yes, sir; they would be chargeable with that themselves.

Cr.-Q. 99. If you had been running a separate and independent express company, you would not have sustained that loss? A. No, sir; we would have compelled the railroad company to pay it.

Cr.-Q. 100. So that it is not really an item chargeable to the express company's account? A. Hardly; no, sir.

Cr.-Q. 101. The net amount that you received is $72,482.60, as you make it out, isn't it? A. Yes, sir.

Cr.-Q. 102. On an investment of $214,285.00—about fifty per cent., is it not?

A. You call the investment our gross earnings.

Cr.-Q. 103. I take it that is what you mean by this—what you have received, rather?

A. Yes, sir; that is what we have received.

940 Cr.-Q. 104. Mr. Glover, in his examination-in-chief, asked you this question: Whether you could state, assuming that a ton of express weight is collected by the express company, put upon a line of railroad, transported to its destination, and delivered to the consignee, which costs the most—the business that is done in bringing the express matter to the railroad and delivering it afterwards to the consignee, or the transportation over the railroad; you stated delivering the matter to the railroad costs the most?

A. The work connected with the express part of it is more than the transportation by railroad.

Cr.-Q. 105, That includes what?

A. All its expenses, as enumerated there.

Cr.-Q. 106. Everything except transportation? A. Yes, sir.

Cr.-Q. 107. Do you know anything about the expenses of running a railroad? A. Very little, sir; only what I have heard from the railroad department.

Cr.-Q. 108. Do you knew which costs the most to run, a passenger train or a freight train?

A. I know very little about that, except from hearsay; on different roads I suppose the cost is different.

Cr.-Q. 109. You do not know, I suppose, whether it costs more to run a line of cars on the Louisville & Nashville railroad than it does on the Iron Mountain?

A. No, sir; I do not know the difference in that case.

Cr.-Q. 110. How can you undertake to say then which will cost the most, if you do not know anything about the cost of railroad transportation?

A. I only judge by what they agree as pretty good pay for transportation on a railroad. They consider, I believe, when they get one cent per ton per mile they get a pretty good thing, as freight, not as express.

Cr.-Q. 111. Who considers that; do you mean everybody; have you talked with all the railroad men?

A. No, sir; only those that I have heard say anything about it—railroad clerks and men that I know.

Cr.-Q. 112. Some railroads are limited in their charges by law, are they not? A. Yes, sir.

Cr.-Q. 113. You don't know then, of your own knowledge, or from your own experience, anything about railroad transportation? A. No, sir; except from such railroad men as I have met with. 941

Cr.-Q. 114. When you were connected with the express company, before your connection with the express department of the Louisville and Nashville Railroad Company, do you know whether the express companies had any rule amongst themselves as to the per cent. of charges they would make to a shipper over and above the cost of railroad transportation?

Plaintiff's counsel objects to that question, as incompetent and irrelevant, the amount the express company's charge not being in issue in this case.

Cr.-Q. 115. Suppose, for example, the railroad company charges you a dollar between two points, how much would you add to that cost for your own charges?

Same objection.

A. I think we added, in the first place, to make what we called our cost of operation, fifty per cent. above their first-class freight rate, and then when we could do so we added a little something for profit for ourselves.

Cr.-Q. 116. That is the rule at the present time with the American Express Company, isn't it?

A. I believe so. On different roads I believe the contracts are different.

Cr.-Q. 117. Don't you know that the American, United States, and Adams all follow that rule of charging fifty per cent. above first-class freight?

A. No, I do not know that except from hearsay.

Cr.-Q. 118. You say that wagon transportation is more costly than railroad transportation?

A. I should say it was; yes, sir.

Cr.-Q. 119. But without knowing particularly what the cost of railroad transportation is?

A. Only judging from what I hear.

Cr.-Q. 120. You think it would cost more to carry two wagon loads of stuff a quarter of a mile to the railroad depot than it would for the railroad company to carry it five hundred miles?

Mr. **Glover**: He don't say so.

Col. **Broadhead**: Well, do you think it would?

942 A. I don't say so, I am talking about the cost of carrying by the railroad company of their average business. I am not talking about any particular box.

Cr.-Q. 121. Suppose they do a good average business; you don't mean to apply it to any particular railroad; some railroads do better than others? A. Yes, sir.

Cr.-Q. 122. You have stated the cost in your opinion at about a maximum of fifty cents, and a minimum of twenty-five cents to carry one hundred pounds of freight as the average cost of transportation by express to the railroad?

A. I said a mile away from the depot.

Cr.-Q. 123. Yes, per mile. Would you say twenty-five cents was an average or a minimum price? A. That, I should think, would be the minimum.

Cr.-Q. 124. A great many of the stations to which and from which you carry express matter you have no wagon transportation at all, have you?

A. No, sir; a good many of them, the small ones, the offices are in the depot.

Cr.-Q. 125. At those stations the express freight is brought by the the shippers? A. Yes, sir.

Cr.-Q. 126. You have no such kind of accessorial service as transportation by wagons at those small places?

A. At some stations we have not.

Cr.-Q. 127. Do you know what proportion of express matter, I mean taking a month's business of the express company, what proproportion of express matter, including stations where wagons are used, and stations where you have agents and no wagons, what proportion of express matter is delivered by the shipper without any cost to the company?

A. A very small per cent. I cannot give you what it is, but I know it must be a very small percentage.

Cr.-Q. 128. Do you know how many stations there are belonging to your company on the Louisville and Nashville railroad and extensions?

A. About two hundred and sixty; in that neighborhood; about two hundred and sixty stations at which we have officers and an express department. There are a great many where we have no office.

Cr.-Q. 129. At how many of those stations at which you 943 have offices do you employ wagons and teams to bring articles for transportation?

A. I could not give you that without consuming a little time; I would have to think that over.

Cr.-Q. 130. At one-half the whole number? A. Oh, no, sir.

Cr.-Q. 131. One-third? A. No, sir; nor a quarter.

Cr.-Q. 132. One-tenth?

A. In the neighborhood, perhaps, of one-tenth.

Cr.-Q. 133. In the neighborhood of one-tenth; that is, twenty-six out of the whole number you would have wagons and drivers employed?

A. Let me see; perhaps I can tell you; no, I cannot; at some stations we have more wagons, and at some less.

Cr.-Q. 134. I reckon you could name those at which you had wagons employed, couldn't you? A. Nearly all; during this period is what you want; up to December?

Cr.-Q. 135. Yes, sir.

A. I would commence with Louisville, Bowling Green, Nashville, Burmingham, Montgomery, Mobile, Pensacola, New Orleans, Memphis, Clarksville, Hopkinsville, Evansville, Paducah; that is about all on that line.

Cr.-Q. 136. Didn't you put wagons at some stations in order to meet competition of other companies who had been there before?

A. No, sir; I do not know that we did. We had the wagons there to do the business in order to collect and deliver goods. Now I would say, for further information, at some of the other towns, instead of owning the horses and wagons we would pay drayage. We would hire our collecting and delivering done. That is included in office expenses.

Cr.-Q. 137. I will just ask you whether, during this period of eight months of which you have spoken, your company, or rather the express department of your company, was not at war with the Adams and Southern Express Company, and whether they were not, during that time, attempting to divert business off your road upon other lines of road?

A. By every means possible.

Cr.-Q. 138. That tended somewhat to increase the expenses of running your department?

A. As compared with our revenue, yes, sir. It reduced our rates between competitive points. In order to hold our own
944 we had to decrease our rates; of course they diverted it wherever it was possible to do so.

Cr.-Q. 139. You are now, you say, auditor of the express department of the Louisville and Nashville railroad?

A. Yes, sir.

Cr.-Q. 140. Who asked you to make this statement, Mr. Clark, of the expenses of your department?

A. That particular one, or the original?

Cr.-Q. 141. I mean the one that you testified from.

A. That is a copy; you mean the original; where did it originate?

Cr.-Q. 142. Yes, sir.

A. With Mr. Clarence Seward, of New York.

Cr.-Q. 143. He is the attorney for the Southern Express Company?

A. Yes, sir; I believe so. He is the attorney for the Adams Express Company, and I believe for the Southern also. I made this under instructions through Gen. Alexander, vice-president of the Louisville and Nashville railroad.

Cr.-Q. 144. You are still doing business with the Louisville and Nashville Railroad Company? A. No, sir.

Cr.-Q. 145. The Louisville and Nashville road has not entered into any contract with the Adams Express Company and the Southern Express Company?

A. Yes, sir; they did enter into such a contract, but they have been enjoined from carrying it out. The suit is pending.

Cr.-Q. 146. How; by decree of court? [A.] Yes, sir.

Cr.-Q. 147. The contract has never been carried out?

A. Not fully; no, sir; we had turned over to the Southern Express Company a part of our lines, and to the Adams a part of our lines, when we were enjoined from turning over any more.

Cr.-Q. 148. What portion have you turned over to the Southern Express Company?

A. The Mobile, New Orleans & Texas route, the Pensacola route, the Mobile & Montgomery—that is, one line—and the Selma & Montgomery, and the Selma & Pine Apple route, which is only partly finished.

Cr.-Q. 149. That has been recently done, has it?

A. Yes, sir; and the St. Louis Division we had turned over to the Adams; that is, we had retired from doing express business.

945 Cr.-Q. 150. Was the Union Express Company a corporation—a stock company? A. Yes, sir.

Cr.-Q. 151. Do you know what became of its stock when it sold out to the Louisville & Nashville railroad?

A. I do not know what became of its stock, sir.

Cr.-Q. 152. You still had an existing company?

A. The Louisville & Nashville Railroad Company bought them out, I believe, all their franchises and property; but they still own the charter, I understand.

Cr.-Q. 153. You were a stockholder in the Union Express Company, were you? A. No, sir.

Redirect examination by Mr. GLOVER:

Q. 1. Col. Broadhead assumed that you said that the Adams Express Company, the Adams and Southern Express Companies, operated a part of the Louisville & Nashville line during the whole period of eight months, from May to December, in that paper mentioned; did you say that?

A. They did do so.

Q. 2. During the whole time?

A. Yes, sir; you see, part of the time we did not do an express business over this St. Louis Division, but they had been doing business over that division all the time.

Q. 3. But the question is, whether those two companies were operating during the time you were operating for those eight months? A. They were, sir.

Q. 4. At what time did they commence to operate the lower line? A. You mean by themselves?

Q. 5. Yes; was it not October, 1880?

A. You mean that the Louisville & Nashville commenced to operate the lower line?

Q. 6. When did the Louisville and Nashville railroad express department commence operating the lower line of your road? A. I think we went in there in October—the first part of October.

Q. 7. You were not jointly operating those lines with those companies? A. Yes, sir.

Q. 8. Before you went in?

A. No, sir; not before we went in. He asked me if at any time they had operated so.

Q. 9. No; he asked you if you were operating all the time together. A. No; part of the time.

946 Q. 10. Explain that fact.

A. They operated the roads by themselves up to the time, of course, that we went on it. After we went on it we operated it jointly.

Q. 11. Give the date. A. That I cannot do exactly; it was only one part of the time.

Q. 12. Explain now how it was, and when there was competition and when there was not, and where the competition existed and where not.

A. The competition commenced when we went on the line—on this lower line—the Mobile & Montgomery, Mobile, New Orleans and Texas, and the Pensacola and Selma routes.

Q. 13. And you went on there about October?

A. About October, 1880.

Q. 14. Who was on those lines before you went there, and who remained there to be in competition with you after that?

A. The Southern Express Company.

Q. 15. But not the Adams? A. No, sir.

Q. 16. Prior to October the first there was no competition between you and the Southern Express Company on the lower line? A. No, sir.

Q. 17. After October the first there was a competition between your road and the Southern Express Company?

A. Yes, sir.

Q. 18. Now, upon the upper line from Louisville—to what place? A. This line commences at Evansville—from Evansville to St. Louis.

Q. 19. To St. Louis—what is the status of that?

A. They were operating themselves until we went on the line—until the express department was extended over that.

Q. 20. Who is "they"? A. The Adams was operating.

Q. 21. The Adams was operating on the Evansville and St. Louis line? A. Yes, sir.

Q. 22. What time? A. About the same time.

Q. 23. In October? A. Previous to October; yes, sir.

Q. 24. After that time there became competition? A. Yes, sir.

Q. 25. How much of that is embraced in this account that you have rendered here?

A. From the date we went on, whatever the date was.

Q. 26. And that was in May?

A. On that division—the St. Louis Division.

947 Q. 27. Where were you operating in May?

A. We were operating all the lines between Louisville and Montgomery, and Memphis, up to Henderson; all intermediate lines were controlled by the Louisville & Nashville Railroad Company. I haven't got dates here. I think we commenced there in September.

Q. 28. Did you have any competition with the Southern Express Company, or with the Adams, until October?

A. Not over the lines. We did between competitive points. You see, we reached a good many points that they did.

Q. 29. On your road? A. On our road? No, sir.

Q. 30. You had no competition with them on your road until October?

A. No, sir; not on our line, up to October. I think the date ought to be September. I cannot give the day in September that we opened it, but I think it was September.

Col. **Broadhead**: You don't think the business men of the country could get along without an express company?

A. They could not get along very well, without the business was done in an express way.

Signature waived.

I certify that the foregoing is a true and faithful transcript of my short-hand notes of the testimony of witnesses in the above-entitled cause.

L. L. WALBRIDGE,
Special Examiner.

Complainant's Rebutting Testimony.

St. Louis, *June* 25, 1881.

Pursuant to agreement, parties met at the office of Messrs. Thoroughman & Pike, at the date above given.

Present: J. R. Shepley, of counsel for the complainant, and Messrs. Thoroughman & Pike, of counsel for the defendant.

Complainant's counsel offered in evidence a copy of the articles of incorporation of the Pacific Express Company. The same is hereto attached, and marked Exhibit 49.

Complainant's counsel then announced that they had no further testimony to offer.

L. L. WALBRIDGE,
Special Examiner.

Examiner's fees, $599.00. Paid by complainant.

70—260

EXHIBIT 48.

Louisville & Nashville Railroad Co. in Account with Express Department of L. & N. R. R. Co.

By receipts from operations of express department.

May, 1880	$27,169 68	July, 1880	$21,438 17	Sept., 1880	$24,023 23	Nov., 1880	$32,698 40
June, 1880	$20,761 28	Aug., 1880	$17,901 11	Oct., 1880	$30,283 88	Dec., 1880	$40,010 13

Total receipts for 8 months, $214,285.88

To disbursements by express department.

	Transportation paid other R. R. and steamboats.	Office salaries.	Office expenses.	Stable expenses.	General line salaries.	General line expenses.	Printing & stationery.	Personal property.	Loss & damage.	Total disbursements for 8 months.
May, 1880	$2,344 99	$6,656 52	$1,751 20	$1,093 95	$4,001 44	$161 00	$3,619 59	$2,859 40	$14 10	
June, 1880	660 60	5,236 54	1,217 68	783 04	3,606 81	298 09	1,715 54	281 45	75	
July, 1880	663 09	5,512 14	1,148 44	918 44	3,598 91	178 70	758 89	2,095 05	14 57	
Aug., 1880	676 59	4,932 75	1,124 35	910 50	3,607 43	131 69	91 16	27 79	26 30	
Sept., 1880	716 05	6,114 89	1,514 61	1,212 53	4,218 54	288 21	784 47	4,208 65	74 70	
Oct., 1880	815 85	7,056 61	1,683 28	1,154 74	4,616 60	186 54	508 18	2,173 89	8 59	
Nov., 1880	775 11	7,563 62	1,640 64	1,490 46	4,816 58	218 52	1,093 15	1,779 20	1,241 18	
Dec., 1880	870 77	8,176 51	2,100 34	1,429 08	4,907 82	279 33	2,963 04	361 07	108 63	
Total for 8 mos.	$7,523 05	$51,249 08	$12,130 54	$8,987 69	$33,874 08	$1,742 08	$11,528 99	$13,784 00	$1,488 82	$141,803 28

Net proceeds, $72,482.60

949 *Articles of Incorporation.*

Know all men by these presents, that we, Edgar M. Morseman, Andrew J. Poppleton, and Joseph W. Gannett, have associated ourselves together, and by these presents do associate ourselves together, for the purpose of forming and becoming a corporation under the laws of the State of Nebraska, with power to engage in and transact the business of transporting money, goods, merchandise, and property, commonly known and called the express business, and with such other and further corporate powers as are conferred by the statutes of Nebraska, namely:

First. To have succession by its corporate name.

Second. To sue and be sued, to complain and defend in courts of law and equity.

Third. To make and use a common seal, and alter the same at pleasure.

Fourth. To hold personal estate, and all such real estate as may be necessary for the legitimate business of the corporation.

Fifth. To render the interest of the stockholders transferable.

Sixth. To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation therefor.

Seventh. To make by-laws, not inconsistent with any existing law, for the management of its affairs.

And we hereby adopt the following

Articles of association.

I.

The name of said company shall be "The Pacific Express Company," and the principal place of transacting its business shall be the city of Omaha, in the county of Douglas and State of Nebraska.

II.

The nature of the business to be transacted by said corporation shall be "the transportation of money, goods, merchandise, and property, commonly known and called the express business," in the State of Nebraska and the United States, and in such other places and countries as it may acquire the corporate right to transact its business.

III.

The authorized capital stock of said corporation shall be six million of dollars, which shall be divided into sixty thousand shares of one hundred dollars each, to be subscribed and paid as required by the board of directors of said company, in obedience to the laws of Nebraska.

950 Said capital stock may be increased in the manner provided by law to such an amount as may be deemed necessary to accomplish the purpose and objects of this corporation.

IV.

The existence of this corporation shall commence on the first day of October, A. D. 1879, and terminate on the first day of October, A. D. 1979, unless sooner dissolved, or continued in accordance with law.

V.

The business of said corporation shall be conducted by a board of directors, not to exceed seven in number, to be elected by the stockholders. Such election shall take place annually, on the first Thursday in January of each year; but a meeting of stockholders for the election of directors to serve for the unexpired portion of the year 1879 may be held at any time after the necessary amount of stock shall have been subscribed to complete the organization of said company, and said directors and officers chosen by them shall serve until the regular annual election in January following.

VI.

The officers of said corporation shall be a president, vice-president, secretary, and treasurer, who shall be chosen by the board of directors, and shall hold office for the period of one year, and until their successor shall be elected and qualified. Vacancies shall be filled by the remaining members of the board of directors.

The secretary need not be a member of the board of dirctors, nor a stockholder.

VII.

The highest amount of indebtedness to which said corporation can at any time subject itself shall not be more than four million dollars.

VIII.

The manner of holding the meetings of stockholders for the election of directors, the election of officers, and the method of conducting the business of said corporation shall be as prescribed by the by-laws adopted by the board of directors.

In witness thereof, the undersigned have hereunto set their hands and seals, this nineteenth day of September, A. D. 1879, at Omaha, Nebraska.

EDGAR M. MORSEMAN. [SEAL.]
ANDREW J. POPPLETON. [SEAL.]
JOSEPH W. GANNETT. [SEAL.]

In presence of—
I. T. GRANGER.

STATE OF NEBRASKA, }
County of Douglas, } *ss:*

On this nineteenth day of September, A. D. 1879, before me, a notary public in and for said county of Douglas, personally appeared said Edgar M. Morseman, Andrew J. Poppleton, and Joseph W. Gannett, to me personally known to 951 be the identical persons whose names are attached to the foregoing instrument, and severally acknowledged the signing hereof to be their voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and notarial seal the date last above written.

[SEAL.] GEO. W. HALL,
Notary Public.

STATE OF NEBRASKA, }
County of Douglas, } *ss:*

I, Wm. H. Ijams, clerk of the district court, in and for said county, said court being a court of record, do hereby certify that the annexed instrument is executed and proved, or acknowledged in due form, according to the laws of the State of Nebraska, to entitle it to be recorded therein. Also that George W. Hall, before whom the same was proved and acknowledged, was at the time of taking such proof or acknowledgment a notary public in and for said county, duly qualified and authorized to take the same. And I further certify that I am well acquainted with the handwriting of the said Geo. W. Hall, and verily believe the signature to the said certificate is genuine.

Witness my hand and the seal of said court, at Omaha, this 19th day of September, A. D. 1879.

[SEAL.] WM. H. IJAMS, *Clerk.*

Articles of incorporation of the Pacific Express Company, received for record Sept. 19th, 1879, at four o'clock p. m., in book A of incorporation at page 372.

JOHN R. MANCHESTER,
County Clerk, Douglas County, Neb.

STATE OF NEBRASKA, }
Secretary's Office, } *ss:*

Received and filed for record this twenty-fourth day of September, A. D. 1879, and recorded in book of miscellaneous incorporations at pages 157, 158.

(Signed) S. J. ALEXANDER,
Sec'y of State.

STATE OF NEBRASKA, }
Secretary's Office, } *ss:*

I, S. J. Alexander, secretary of the State of Nebraska, do hereby
certify that I have carefully compared the foregoing
952 copy of the articles of incorporation of the Pacific Express
Company, with the copy, as filed for record in this office, on
the twenty-fourth day of September, A. D. 1879, and find the same
to be a true and perfect copy thereof.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Nebraska. Done at Lincoln, this twelfth day of May, in the year of our Lord one thousand eight hundred and eighty-one, of the Independence of the United States the one hundred and fifth, and of this State the fifteenth.

[SEAL.] S. J. ALEXANDER, *Sec'y of State.*
By EDWARD P. ROGERS, *Deputy.*

Depositions taken at Cincinnati, Ohio, February 4, 1881, before A. R. Probasco, commissioner.

Clarence H. Seward, being of lawful age, was duly sworn and deposed as follows:

Direct examination by Mr. **Whitfield**:

Q. 1. State your name, residence, etc.?

A. Clarence A. Seward; residence, city of New York; occupation, attorney and counsellor-at-law.

Q. 2. If you know anything about the financial condition of the Southern Express Company, the plaintiff in this suit, will you please state it?

A. I have a knowledge of the financial condition of the Southern Express Company, which enables me to state that it has assets to the amount of $1,500,000.00 to $2,000,000.00, against which there is no debt existing, to my knowledge, and, therefore, I would state that, so far as I know, it is entirely unincumbered.

Q. 3. Of what character of property do those assets consist?

A. Cash on loan or deposit, and investments in Government and railway bonds. I think all of such railway bonds are now quoted on the stock exchange at or above par.

Counsel for defendant objects to any statements concerning the quotations of the market, as irrelevant and incompetent.

Well, then, I know that the securities are published in the "Commercial Reporters" of the city of New York, as sold on the stock exchange.

Counsel for defendant objects to anything concerning what is published about these bonds, as irrelevant and incompetent.

953 Q. 4. In the valuation you made did you estimate the market values, or the fair values of the securities?

A. I estimated less than the market value of the securities, simply at the face.

Counsel for defendant objects to this, as irrelevant.

Q. 5. Mr. Seward, are there not some other forms than bonds or money, in which the assets of the Southern Express Co. consist? If so, please state what other property they have.

A. I stated call loans and cash on hand. I am generally advised also that the company possesses real estate, but such I have not seen.

Objected to by counsel for defendant, as being hearsay evidence and incompetent for that reason.

Cross-examination by Col. **Thoroughman**:

Cr.-Q. 1. Mr. Seward, where is this property that you have mentioned as belonging to the Southern Express Co. located?

A. A portion of it was, when I saw it, to the extent of about $400,000 in bonds, in the safe of the Southern Express Co., at its office in 23rd street, in the city of New York, and $1,110,000 of the bonds, which I saw counted, are in the vaults of the Safe Deposit Company in the city of New York, which were opened at my request by one of the employees of the Southern Express Co.

Cr.-Q. 2. When did that event take place?

A. Last Saturday.

Cr.-Q. 3. Have you knowledge of any other property belonging to the Southern Express Co. than that you have just named? A. Yes, sir.

Cr.-Q. 4. State what it is and where it is.

A. The knowledge that I have is derived from the fact that I saw upon the books of the company entries indicating the possession by the Southern Express Company of other bonds than those which I have mentioned, and I saw other bonds, corresponding with such entries, in the same boxes, in the Safe Deposit Company in which I saw the bonds that I counted. I did not count the latter, supposing that those I had already counted would be sufficient to establish the pecuniary condition of the company.

Cr.-Q. 5. Now, if I understood you rightly in your examination-in-chief, you do not know that the Southern Express Co. does own any real estate anywhere?

954 A. Nothing, except as I told you, I saw entries in the books which I looked at and give from general memory, but I have not seen either the papers or the real estate.

Cr.-Q. 6. Where does the real estate lie?

A. I can only tell you generally, at the South. I think at Memphis, Mobile, and several other places which I saw in the books.

Cr.-Q. 7. You do not know anything about the quantity of real estate owned by the Southern Express Company?

A. No, I do not know anything about the amounts of the bonds, but the aggregate of the values I saw were in excess of $1,500,000.

Cr.-Q. 8. In what State does the principal part of the sum lie?

A. That I cannot tell you. I did not charge my memory with that, as I did not have time to examine the papers.

Cr.-Q. 9. Do you occupy any official relation to the Southern Express Company?

A. No, sir. But whenever the express company has had litigation at the North, or in the Supreme Court at Washington, I have been its counsel.

Cr.-Q. 10. You have no official relation to the corporation such as to enable you to be possessed of facts concerning its property by reason of your office?

A. No, sir; not by reason of my office.

Cr.-Q. 11. Have you any personal knowledge of outstanding liabilities against the corporation?

A. I am not an officer of the corporation, and never heard of any liabilities except such as were committed to my custody to manage on behalf of the company.

Cr.-Q. 12. Do you stand in such relation as that you would know anything about the condition of the liabilities, unless specially put in your charge?

A. I think I am authorized to say, that if there were any liabilities, in any worthless state, I would have them in my charge.

Cr.-Q. 13. You say this simply because you have been their attorney? A. I have always been their attorney.

Cr.-Q. 14. You have always been their attorney, and upon that fact you make this statement, that you do not think there are any liabilities that are contested?

955 A. Yes, sir; within my bailiwick.

Cr.-Q. 15. So that the sense of your knowledge is what has been told you by the officers of the corporation—what you had seen on their books—and what they have exhibited to you as their property?

A. Yes; I suppose so. The same sort of knowledge that an executor or assignee of an estate would have in arriving at what are the assets, which were to come into his custody. I examined the books of the company, which bore the imprint upon the outside, of the Southern Express Company; I looked at these, and I then asked an inspection of the assets, which was granted.

Cr.-Q. 16. You say that you have such information as an executor or trustee would have. I ask you if, in those cases, you would not have the test of an oath at your command under the laws of the country?

A. No, sir; the only test under the laws of the State of New York which is ever required to be sanctioned by an oath is a negative one, to wit, that the inventory contains all that has come to your knowledge as the property of the testator.

Cr.-Q. 17. You had no power in your hand of that kind, even from the officers of this corporation, at the time they made the exhibit you speak of, on last Saturday? A. No, sir.

Cr.-Q. 18. Which one of the officers showed you these books? A. The cashier.

Cr.-Q. 19. Who is he?

A. Mr. Robbins B. Smith.

Cr.-Q. 20. He resides, of course, in New York?

A. That I cannot tell; I do not know whether he resides in New York or Jersey City, but his place of business is in New York.

Cr.-Q. 21. Where?

A. At the office of the Southern Express Company, 23rd street west, in the city of New York, second story front.

Cr.-Q. 23. Now, as I understand, you fixed the value of this property on the basis of the stock reports of the city of New York?

A. Well, to a certain extent, yes; to a certain extent, no. We in New York know, for instance, that New York Central 956 bonds are worth above par; I think everybody participates in that knowledge. We know that the governments are above par; I think everybody participates in that knowledge. And with regard to most of the other bonds which I saw I have a general knowledge—not derived from having seen them sold, but having seen the stock reports for a long time—that they are above par.

Cr.-Q. 24. Now, of the Government bonds, how many are there? A. That I am not able to tell you precisely.

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Cr.-Q. 24. Now, of the Government bonds, how many are there? A. That I am not able to tell you precisely.

Cr.-Q. 25. About how many?

A. I think there were over $30,000 worth.

Cr.-Q. 26. How many New York Central bonds?

A. Between $70,000 and $80,000.

Cr.-Q. 27. Could you name the other bonds that you saw?

A. I could give you in detail the names of the bonds and the amounts. I note, Mobile and Ohio, first mortgage (amount I cannot tell). Texas and Pacific, first mortgage (amount I cannot tell). Mobile and Ohio, first pref. debentures. Charlotte, Columbus, and Augusta, cons'd. Charlotte and Cols, second mortgage, 70. Mississippi and St. Louis, 70. Mississippi and Tennessee, 80. These were all that I personally counted, and I counted of these twelve different bundles.

Cr.-Q. 28. Are these papers named all that you did count?

A. All that I counted, one by one.

Cr.-Q. 26. Will you tell us how long the Southern Express Company has owned that property, or any part of it, to your knowledge? A. I cannot tell you of my own knowledge, because I did not see them buy them. I can tell you from the entries in the books.

Cr.-Q. 30. You state that this property, as I understood you in chief, is unincumbered? A. So far as I know.

Cr.-Q. 31. I will get you to state how it could be incumbered—the character of property you just named.

A. By being placed as collateral for a loan.

Cr.-Q. 32. You spoke of cash on hand, and out on call loans. How much cash was there on hand? A. $71,000.00.

Cr.-Q. 33. Did you count it?

A. No, sir; I took the entry in the book for it.

Cr.-Q. 34. How much cash was out on call loans?

A. $400,000.00.

957 Cr.-Q. 35. Where was that money loaned; in New York?

A. Yes, sir; so was I was informed.

Cr.-Q. 36. You do not say what your information was?

A. I have given you the source of my information. I did not see the names of the parties on the collaterals.

Cr.-Q. 37. Mr. Seward, what property, if any, has the Southern Express Company in Missouri, within your own knowledge?

A. I never have seen any property in the city of St. Louis, or the State of Missouri, which I knew belonged to the Southern Express Co.

Cr.-Q. 38. Do you know anything about what property the company has in Arkansas?

A. Nothing, except from hearsay.

Cr.-Q. 39. How much did the sum of money on call loans, money on hand, and the various securities you name, aggregate?

A. I said between $1,500,000 and $2,000,000. $1,119,000, which I counted in the twelve packages of bonds, $400,000 on call loans, $71,000 in cash, making something between $1,500,000 and $2,000,000.

Cr.-Q. 40. Do you know of their having any other property to bring it up to $12,000,000.

A. I do not know anything about that.

Cr.-Q. 41. You can only speak of the property you have mentioned, which is all in the city of New York?

A. Yes, sir.

Cr.-Q. 42. You are one of the chief counselors in this case?

A. Yes, sir.

Deposition of H. S. Julier.

Direct examination by F. E. WHITFIELD:

Q. 1. State your name, age, residence, and business.

A. Henry S. Julier; age, 39; residence, Cleveland; business, assistant general superintendent American Express Company.

Q. 2. State whether or not you have any familiarity with the conduct of the express business and its details.

A. I have been in the business for the last twenty years, and have a knowledge of the details.

Q. 3. Can you distinguish what is called the "accessorial service" of the express business, from part that of the business which is performed by the railroad company?

A. I think I could.

958 Q. 4. If so, please do it. Give me some clear, distinct idea —which the record will show—what is performed purely by the express companies, without the aid of railways, in the transportation of express matter.

WITNESS: Do you desire me to give the details?

Q. 5. COUNSEL: Would like to have all the details. Would be glad if you would state what are the elements of the cost to the express companies, of the service that they perform themselves without the aid or instrumentality of railway companies.

A. I suppose I could answer that question better by just beginning where we should have to start, supposing we began business. The first requisite would be an office, which of course, must be heated, lighted, and fitted up, and which would require an expenditure for counters, desks, railings, vaults, and safes. After this we would require stationery. The number of blanks and books used in our service, I do not exactly remember, I think it is about 160. We are now ready in a measure for business. We must then have agents to look after the details. We must necessarily have clerks, whose duties are to receive packages and give receipts.

The last sentences objected to by counsel for defendant, as not being responsive to the interrogatory.

In order to secure business we must have horses, wagons, and drivers. The business which these drivers pick up in the streets is brought to the office. The drivers call from place to place on different streets, and this business which they pick up has to be receipted for. As a protection against loss, we frequently in large cities, such as Cincinnati, are obliged to have two men on a wagon. As I before said, the freight is brought to the office and there clerks take charge of it, and make way-bills, and assort it for the different routes. It is then reloaded on the wagons, conveyed to the depot, and placed in the train, where it remains in the custody of our own men to the point

of destination. On arrival of train at destination the freight is delivered to our own men, who unload it and place it in our wagons, to be conveyed to the office where it is assorted, written upon delivery books, and each driver takes charge of that which prop-
959 erly belongs to his route, and delivers it to consignees. The drivers have to account for the money they receive.

The latter sentence objected to by counsel for defendant, as not being responsive to the interrogatory.

Q. 6. Are there any appliances or conveniences that you make use of in the transportation of these packages on the trains?

A. There are.

Q. 7. What are they?

A. They consist of safes, chests, bags, and pouches.

Q. 8. What is the necessity for the safes, bags, and chests?

A. To protect the parcels from damage. Small packages, if left loose in the car, are apt to be damaged, and we find it necessary for protection, in order to deliver the packages safely to consignees, to have safes and trunks.

Q. 9. Do parcels going by express always go to destination in custody of one messenger, or more than one?

Objected to, as being irrelevant, incompetent, and immaterial.

WITNESS: I might say further, that at transfer points we have to employ a number of men to transfer matter from one train to another; that is, matter going beyond the terminal point of the road. This force of men, of course, varies according to the work done. We require from two to twenty men at such transfer points.

Q. 10. Does the use of safes, bags, pouches, and trunks, and other devices for holding parcels, have any effect upon the speed or dispatch in which such transfers can be made, and what is the effect?

A. It has this effect: If 12 to 50 packages are placed in a trunk we can handle that one trunk much more easily than that number of packages. It is of material assistance in transfers.

Objected to, as being immaterial.

Q. 11. What time, ordinarily, do you have for making transfers of express matter to connecting trains?

Objected to by defendant's counsel, as irrelvant and incompetent.

A. It varies from three to twenty minutes. I might say from one to twenty minutes.

Q. 12. In doing a lively express business, could not one messenger transfer to another messenger and take receipts for all
960 the packages so transferred without the conveniences of packing chests and safes?

Objected to by defendant's counsel, because it is leading.

A. I would reply that a messenger could not do it. We would not consider it safe for a messenger to leave his car to transfer to another. We do not permit a messenger to go out of his car from the time he receives his run until it is delivered at the terminal point—on account of security.

The witness volunteered the following statement:

I would like to make a further statement as to matters that come within this "accessorial service." That service would be made up largely of the expense of looking after our business. Our larger offices of course do not require so much looking after as the small offices. The express business is such that we go into every hamlet in the land, and we have to secure such men as we can get as agents, and they are not always faithful or of the best class. This necessarily requires a great deal of watchfulness. We are compelled to have men constantly on the road looking after them. They are termed route agents, and these, again, are instructed in their duties by division superintendents. This constitutes a very large expense, not only for their salaries, but their traveling expenses.

Then again, in the auditing of accounts there is a large item of expense. It requires a large and expensive force.

Q. 13. What are the actual services performed for the express companies by the railroad companies?

A. The mere forwarding of the matter from point to point on their cars. They do not handle it in any shape or manner.

Objected to by defendant's counsel, on the ground that the question had previously been answered.

Q. 14. Mr. Julier, assuming that it is worth one dollar to carry a piece of express freight from A to B, what proportion of that sum is a proper or reasonable compensation for the services performed by the railroad company, and what is a proper compensation for the accessorial service performed by the express company?

A. Well, I should put the railroad company's share at not exceeding 40 per cent., and the accessorial service would be 50 per cent. The balance would be for loss and damage and profit.

961 Q. 15. What is the average rate of compensation that your company pays the railroad for express facilities?

Objected to, on the ground that it is leading, immaterial, and incompetent in this cause.

A. Between 35 per cent. and 40 per cent.

Cross-examination by Mr. THOROUGHMAN:

Cr.-Q. 1. What is your age, Mr. Julier? A. 39 years.

Cr.-Q. 2. You reside at Toledo? A. Cleveland.

Cr.-Q. 3. You have been twenty years in the express business?

A. I have.

Cr.-Q. 4. In what branches have you been engaged?

A. I have been in all of them; I began as boy in the office.

Cr.-Q. 5. How long were you a boy in the office?

A. Two years.

Cr.-Q. 6. At what point?

A. I was in Canada, at Goderich and Brampton. I might say, I was a boy in the office perhaps one year. I was messenger for a short time, and then I went into the auditing office at Buffalo.

Cr.-Q. 7. How long were you in the auditor's office?

A. I was there from, I think, 1862 until the fall of 1865.

Cr.-Q. 8. In what capacity were you engaged in the auditing department? A. I might say in all the branches.

Cr.-Q. 9. The court will not understand what you mean unless you speak more definitely?

A. I went into the auditing office as what we term "back bill clerk;" that is, to look after and call for all way-bills that have not been returned by the different offices. I went from there into the general accountant's office as assistant to the auditor, where I had charge of all the statements and reports. My duties were to examine the statements and see that they were correct.

Cr.-Q. 10. What other positions did you occupy in the auditor's office? A. Those were the positions.

Cr.-Q. 11. What did you do in the express business after you left the auditor's office?

A. I might say that I was in the stationery department, at Buffalo also.

Cr.-Q. 12. What did you do after you left that place?

A. Then I was in the Buffalo office as money-receiving clerk; from there I was appointed as route agent.

962 Cr.-Q. 13. On what road?

A. On several roads—Lake Shore, Michigan Southern, Cleveland & Columbus, and two or three other lines. From there I was appointed division superintendent, having charge of the Ohio division.

Cr.-Q. 14. What are you now?

A. Assistant general superintendent.

Cr.-Q. 15. Have you ever had any express experience on railroads west of the Mississippi river? A. No, sir.

Cr.-Q. 16. I will get you to state if the American Express Company had any litigation like this we are in?

A. We are having some.

Cr.-Q. 17. You testified in that case, I believe?

A. No, sir; it has not got that far.

Cr.-Q. 18. Did you not make an affidavit in this case, which was presented to the court at Indianapolis last summer?

A. No, sir.

Cr.-Q. 19. It has not got as far as the testimony?

A. No, sir.

Cr.-Q. 20. When did you familiarize yourself with all those subjects that you name as "accessorial service"?

A. Why, sir; I have had this matter for years——

Cr.-Q. 21. Under consideration?

A. Not under consideration, but it came under my immediate knowledge.

Cr.-Q. 22. Tell me where you got the meaning of the word?

A. The first time, I believe, I ever heard the word "accessorial" was about six months ago.

Cr.-Q. 23. From whom did you hear it?

A. I think it was Mr. Weir.

Cr.-Q. 24. Who is Mr. Weir?

A. He is assistant superintendent of the Adams Express Company.

Cr.-Q. 25. Now, from whom did you get the definition of the word "accessorial"?

A. I could not say, sir.

Cr.-Q. 26. Have you ever examined any book on that subject? A. I have not.

Cr.-Q. 27. Is the definition which you have given to Col. Whitfield one of your own coinage, or has it been given you by somebody?

963 A. Well, it is my understanding of the word, that it means that part of the expense outside of what we pay for railroad transportation.

Cr -Q. 28. Where do you get that understanding?

A. I could not say positively; the matter has been talked of by us.

Cr.-Q. 29. It has been talked of by you and grown up in your mind within the last six months, to mean what you detailed substantially to Col. Whitfield? A. Yes, sir.

Cr.-Q. 30. It means, in your mind, all the outlays, expenses, and services of whatsoever nature, opposite to those performed by the railroad companies in the express business?

A. Yes, sir.

Cr.-Q. 31. And that is all you know about the word?

A. Yes, sir.

Cr.-Q. 32. In it you include office rent? A. Yes, sir.

Cr.-Q. 33. Stationery, books, the scales you weigh your goods on? A. I would not include scales; would include the interest on the cost.

Cr.-Q. 34. If you include the interest on the cost that would be including the article, substantially? A. Yes, sir.

Cr.-Q. 35. You include safes and everything you use to pack articles in? A. Certainly.

Cr.-Q. 36. Do you include clerk hire, messenger hire, and horses, harness, and wagons? A. Yes, sir.

Cr.-Q. 37. You include every conceivable item except simply that of railroad transportation; do you include the expenses of agents on the line? A. Yes, sir.

Cr.-Q. 38. The salaries you pay them and their traveling expenses? A. Yes, sir.

Cr.-Q. 39. Do you not include actually the clothing on their backs in some cases? A. I am not aware that we do.

Cr.-Q. 40. Do you not know that in some cases you have done that? A. No, sir.

Cr.-Q. 41. Do you not know that in your company or that of others within your own knowledge, the expense of overcoats and umbrellas for such agents has been included?

A. No, sir.

964 Cr.-Q. 42. If the corporation, of which you are a member or agent, were to make a contract with one of its employees that it was to give him so much money and clothes per month, that item would be so much accessorial service?

Objected to by counsel for plaintiff, as purely hypothetical.

A. We do not make any such contracts.

Cr.-Q. 43. If you were to make such a contract, would not that be the case?

Same objection by plaintiff's counsel.

A. Certainly.

Cr.-Q. 54. Now, all these things you say are worth fifty per cent. of the amount received by the express company; in other words, really sixty per cent. of the amount received; out of the one dollar given in the case mentioned by Col. Whitfield you give in your answer forty cents to the railroad company, and the other sixty cents you keep; fifty cents of that sixty cents represents this "accessorial" expense?

A. Fifty cents or more, I said.

Cr.-Q. 45. So, then, the railroad company must be satisfied in your mind, in the eye of justice, with forty cents out of the one dollar? A. I think so.

Cr.-Q. 46. Opposite that question, in my mind, stands this answer of yours, that you are getting the railroad companies to serve you in that behalf, for thirty-five or forty per cent.; now, what roads are doing that with you?

A. I would put the answer in this shape: That it runs between thirty-five and forty per cent.; some months it may be thirty-five, some months forty.

Cr.-Q. 47. What roads?

A. The roads we run over; we run over twenty-eight thousand miles of railroad in this country.

Cr.-Q. 48. This answer applies to them? A. Yes, sir.

Cr.-Q. 49. Now, please state if you are doing business over any one of those roads without having a contract? A. No, sir.

Cr.-Q. 50. You never have had any experience on railroads west of the Mississippi river in the express business?

A. No, sir.

Cr.-Q. 51. Now, you base the right of the express company upon the idea of the expense that they incur in the service they perform for the public?

965 A. If I understand your question right, I would answer it in this shape, that we make our contracts with the railroad companies, and pay them according to those contracts.

Cr.-Q. 52. There are two cases made by you in the record. The answer to Col. Whitfield, where you give the railroad forty per cent.—that is, where there is a contract existing; then, again, you answered that if there was no contract in operation—independent of any contract—justice would accord to the railroads forty cents out of one dollar. A. Yes, sir.

Cr.-Q. 53. I ask you if, in making that answer, you took into consideration the expenses and outlays the express company had to incur in the performance of this "accessorial" service.

A. I should state that forty per cent. would be ample compensation to the railroad company.

Cr.-Q. 54. You gave that answer upon the assumption of the details that you name, did you not? A. Yes, sir.

Cr.-Q. 55. Have you ever had any experience as a railroad man? A. None at all.

Cr.-Q. 56. Please tell the examiner how you are able to partition off this percentage, belonging, in justice, to the railroad and the express company.

A. I partition it off in this way: I find what our cost is for doing the business, and what we receive.

Cr.-Q. 57. You have a rule of this sort, have you not, namely, that the railroad company charges you for services that you ask at its hands, then you add to that fifty per cent. for the carriage?

A. Yes, sir.

Cr.-Q. 58. Now, then, you take the expenses incurred by the express company in the performance of this service; how could you say what the railroad company is entitled to, having had no railroad experience?

A. I did not say what the railroad company is entitled to; I said what we paid them.

Cr.-Q. 59. Then, Mr. Julier, you do not want this record to represent you at court as stating what the railroad companies are entitled to, but simply what you pay under your contracts?

A. That is it, sir; what they are satisfied with.

Cr.-Q. 60. You have had no railroad experience, you state?

A. No, sir.

966 Cr.-Q. 61. You do not know what it costs to run a railroad train? A. I do not know anything about it.

Cr.-Q. 62. You do not know what it costs to construct a railroad, or anything about the length of time a car-wheel lasts; you do not know how long a pilot-wheel will last, compared with the wheel of an ordinary coach. You do not know what an engine or passenger coach costs?

A. Only from hearsay.

Cr.-Q. 63. You do not know anything about the cost of fuel for running an engine any given number of miles, say 100?

A. No, sir; only from the record of what I have seen.

Cr.-Q. 64. Do you include in this accessorial service all necessary expenditures for protecting your property and your rights, and the property of the public?

WITNESS: What do you mean by rights?

Cr.-Q. 65. COUNSEL: I mean where property is entrusted to your care—matter, for instance, in transit—and the expenses you incur in defending your franchise.

A. I should include the franchise.

Cr.-Q. 66. In defending the franchise, would you not include court costs and attorney's fees? A. Yes, sir.

Cr.-Q. 67. Do you carry insurance upon your property?

A. On goods in transit.

Cr.-Q. 68. You would include expenditures of that sort?

A. Certainly.

Cr.-Q. 69. Do you know anything about the difference in running a railroad in a sparsely settled country, and one which is thickly settled?

A. I do not pretend to know anything about railroads.

Cr.-Q. 70. You do not pretend to know anything about the difference in the cost of railroads where the grades are heavy and where they are light?

A. I am aware, of course, that it costs more to run a railroad where the grades are heavy than where they are light.

Cr.-Q. 71. Is it not true that it is more expensive to run railroads in a sparsely settled country than one which is thickly settled?

A. I do not think it is any more expensive, but the receipts are not as large.

Cr.-Q. 72. Cannot the railroad, in proportion to the increase of its traffic, decrease its charges and make money?

967 A. I should say it could.

Cr.-Q. 73. You spoke about this accessorial service; is it not an essential part of your business? A. It is.

Cr.-Q. 74. You spoke of transfers—where you meet and connect with other roads; you say that there you have men employed who come in for this accessorial pay. Now you say that you never heard the word "accessorial" until about six months ago? [A.] Six months, or thereabouts.

Cr.-Q. 75. But you have had twenty years' experience?

A. Yes, sir.

Cr.-Q. 76. Now, tell us a single case, in your twenty years' experience, where you have ever paid for any accessorial service. A. We pay, every day, for accessorial service, as I understand the meaning of the word.

Cr.-Q. 77. Paid as you described above? A. Yes, sir.

Cr.-Q. 78. Is St. Louis your Western terminus?

A. It is one.

Cr.-Q. 79. Do you pay any accessorial service there?

A. Yes, sir.

Cr.-Q. 80. Let me ask you, then, suppose at Cleveland, where you live, you send out your wagon to get a package and bring it to your office, and make a way-bill for it, and then take it to the train; do you make any difference where an individual brings a package to your office himself—do you allow him for it? A. No, sir; we do not.

Cr.-Q. 81. Do you know of any instance where there has been an allowance to a merchant or individual who brought a package or packages to your office, or do you make any difference? A. Oh, we have made an allowance in certain cases.

Cr.-Q. 82. Could you name the person?

A. It would be a merchant who brought a large quantity of goods to our office.

Cr.-Q. 83. Can you specify a single case, so that we can get the person's evidence?

A. I could not. It is a matter that has occurred for years, but is not a rare occurrence.

Cr.-Q. 84. What proportion of the packages that are shipped by your express are brought to your office by your own agency? A. I could not answer that, definitely, but it is a very large proportion; I think, not less than 75 or 80 per cent. However, this is mere guesswork.

968 Cr.-Q. 85. In what States does your company do business?

A. From New Brunswick and Maine to the Mississippi river and West.

Cr.-Q. 86. At what points West?

A. We do business west of the Missouri river, in Dakota*h*, and North into the British Possessions.

Cr.-Q. 87. South of the Ohio? A. No, sir.

Cr.-Q. 88. Do you go south of the Arkansas river?

A. No, sir.

Cr.-Q. 89. Do you know anything about an arrangement that your company shall not go into the Southern States, to interfere with the Southern Express Company?

A. I have heard that there is such an arrangement.

Cr.-Q. 90. And that the Southern shall not interfere with your business? A. No, sir.

Cr.-Q. 91. This business in which your company is engaged is under contracts with the railroad companies?

A. Yes, sir.

Cr.-Q. 92. Do you know of any railroads in the States of Illinois, Indiana, Ohio, or Pennsylvania that are doing their own express business?

A. I know that the Louisville, New Albany & Chicago railroad, in Indiana, is doing an express business.

Cr.-Q. 93. How long has it been doing this?

A. Since July last.

Cr.-Q. 94. You stated in the direct examination that in a case where one dollar, for example, is charged for the transportation of express matter between two points—from A to B—you pay to the railroad company 40 cents of that dollar.

A. I do not think I gave my answer in that shape.

Cr.-Q. 95. Well, under your contracts with the railroad companies, they get 40 per cent. and you get the balance, 60 per cent.? A. Yes, sir.

Cr.-Q. 96. And of your proportion of 60 cents, 50 cents goes to the defrayment of accessorial expenses? A. Yes, sir.

Cr.-Q. 97. Your best estimate is 50 per cent.?

A. It will average more than that, I think.

Cr.-Q. 98. The 50 per cent. you speak of is to pay for the labor and service that you perform as an express company?

A. Yes, sir.

969 Cr.-Q. 99. Sixty per cent. would be the gross receipts?

A. Yes, sir.

Cr.-Q. 100. Ten per cent., then, would be net profit?

A. I said we would have left ten per cent. for loss and damage and profit.

Cr.-Q. 101. How much of that is profit?

A. I could not tell exactly.

Cr.-Q. 102. What is the basis or rule by which you make your express charges—by the pound or by the value of the package?

A. It is both—per hundred pounds, and according to value.

Cr.-Q. 103. How are the charges made by the railroad company—in proportion to the number of pounds carried?

A. Yes, sir; in proportion to the number of pounds carried.

Cr.-Q. 104. Railroad transportation, then, is based on the hundred pounds? A. Yes, sir.

Cr.-Q. 105. Your compensation, then, is based on the rate per hundred pounds and the value of the package?

A. Yes, sir.

Cr.-Q. 106. You have, you say, certain contracts with the railroad companies? A. Yes, sir.

Cr.-Q. 107. Are you required thereunder to disclose to the railroad companies the character of the matter that you transport in your express cars, or in your bags or safes?

A. No, sir. There is, however, a stipulation in some contracts that we shall not carry certain classes of freight.

Cr.-Q. 108. Do you make a tally list to the railroads of the matter that you deliver to them? A. No, sir.

Cr.-Q. 109. You way-bill all the articles sent from your offices? A. Yes, sir.

Cr.-Q. 110. Do the railroad officials examine those way-bills? A. No, sir.

Cr.-Q. 111. They are all within your own charge?

A. Yes, sir.

Cr.-Q. 112. So that the railroad company does not know what you transport? A. No, sir.

Cr.-Q. 113. Is there any arrangement exempting the railroad company from liability in case of loss?

A. In some cases, where they demand we shall release them from liability.

970 Cr.-Q. 114. That is by express contract between you and the railroad company? A. Yes, sir.

Cr.-Q. 115. You are not transporting matter over any railroad where there exists no express contract between the railroad company and the express company?

A. No, sir; we are not doing business over any road unless we have a contract, either written or verbal.

Cr.-Q. 116. Well, in the case of verbal contracts, are there exemptions as to liability? A. In some.

Cr.-Q. 117. You assume the liability?

A. As a rule; some we do not.

Cr.-Q. 118. Your experience, then, as an expressman has been only in the business where there have been special contracts between the railway companies and your company?

A. We never have operated a line without a contract.

Cr.-Q. 119. You cannot speak of the question in regard to express companies where there is no such contract—except the contract that the law implies between carrier and shipper?

A. No, sir; I cannot.

Cr.-Q. 120. Have you an agency in the city of Cincinnati?
A. Yes, sir.

Cr.-Q. 121. In St. Louis? A. Yes, sir.

Cr.-Q. 122. Your idea of accessorial service embraced all the business that is done by an express company?
A. Outside of the transportation.

Cr.-Q. 123. Do you include the salaries of your messengers as part of the accessorial service?
A. I have so stated.

Cr.-Q. 124. The system of sending out drivers, in large cities like Cincinnati, to collect freight adds very much to the business of an express company, does it not?
A. Yes, sir; also to the railroad company.

Cr.-Q. 125. What, in your opinion as an expressman, would be the difference in price in case you should dismiss with the service of drivers and wagons, and receive only such articles as were brought to your office by the shipper?
A. I do not think there would be any price; I doubt whether we would have any business.

Cr.-Q. 126. The fact is they are sometimes brought by shippers themselves?
971 A. Sometimes; but these are exceptional cases.

Cr.-Q. 127. You think there would be no such thing as the express business unless you send out your wagons to collect freight?
A. That is my opinion.

Redirect examination by Mr. SEWARD:

Q. 1. You have been asked on cross-examination if you knew anything about the custom which prevailed as to the charges by railroad companies to express companies between which there exists no contract. Do you know of any case in which there has been any custom established of a railroad company charging an express company, except where there was a contract between the parties?
A. I do not, sir.

Q. 2. You have been asked if you had any experience as a railroad man. Have you not had some experience with railroads in the matter of making contracts or arrangements for the transportation of express matter?

Objected to by defendant's counsel, as being leading, incompetent, and irrelevant.

A. Yes, sir.

Q. 3. You have stated that the American Express Company occupies about 28,000 miles of railway. Can you state about how many different railway corporations comprise such 28,000 miles?

Objected to as being immaterial and incompetent.

A. It is up in the hundreds.

Q. 4. Do you have contracts with all those companies?
A. Yes, sir.

Q. 5. Now, in making these contracts, who says how much the express company shall pay—the railroad company or the express company?

Objected by defendant's counsel, upon the ground that it is a matter which cannot be proven in that way. Of course there are two parties to a contract. It is the act of both; it cannot be the act of one.

A. The railway company.

Q. 6. Then the railway company nominates how much it is going to charge the express company for express facilities?

A. It does.

Objected to by defendant's counsel, on the ground that it is leading, and a repetition of the answer of the witness.

972 Q. 7. Now, having reference to the hundred or odd companies with which the American Express Company has contracts, how many of these railroad companies have not been satisfied to receive from 35 to 40 per cent. of the gross earnings of the express company?

Objected to by defendant's counsel, upon the grounds that it is leading, incompetent, and irrelevant; besides, it is assuming a fact that is not shown anywhere in the record.

A. I know of but one—the Louisville, New Albany and Chicago Railway Company.

Q. 8. So far as you are advised, what is the usage or custom of railway companies—the general charge made by them for extending express facilities, having reference to the earnings of the express companies?

Objected to, upon the ground that it is asking the witness to state what he has been advised.

A. It amounts to about 40 per cent.

Recross-examination by Col. BROADHEAD:

Cr.-Q. 1. You were asked in reference to contract. Is it not a fact that some of the roads with whom you have contracts charge one and one-half times upon the merchandise transported for the express companies? A. Yes, sir.

Cr.-Q. 2. Some charge as much as twice?

A. I know of none charging that rate.

Cr.-Q. 3. Once and one-half is the ordinary rule?

A. Yes, sir.

Cr.-Q. 4. How is it in regard to messengers' fare?

A. Well, it is very rarely that we pay any messengers' fare. In some few cases we pay half fare for messengers.

Cr.-Q. 5. That is always provided in the contract?

A. Yes, sir.

Cr.-Q. 6. Is it not true that articles are frequently delivered at points on the line of a railway where you have no agent, and none of what is "accessorial service," unless you speak of the service of the messenger on the train?

A. It is a very rare occurrence.

Cr.-Q. 7. You have agents at all the principal points on the road?

A. Yes, sir.

HENRY S. JULIER.

973 It is agreed that a copy of the foregoing deposition of H. S. Julier may be used, so far as pertinent and applicable, in the suit of William B. Dinsmore, as president Adams Express Company, *vs.* Denver & Rio Grande Railway Company, with like causes and effect as if the same had been duly taken therein; said cause pending in the circuit court of the United States for the district of Colorado.

St. Louis, *Feb.* 5, 1881.

Further taking of testimony continued to Feb. 7, 1881.

H. R. PROBASCO,
Commissioner and Examiner.

St. Louis, *Feb.* 7, 1881.

Testimony taken pursuant to adjournment, same parties as before.

H. R. PROBASCO,
Commissioner and Examiner.

Present, also, L. C. Weir, witness for plaintiff, who, being first sworn, testified as follows:

Direct examination by Col. Whitfield:

Q. 1. State your name, age, occupation, and residence.

A. Name, L. C. Weir; age, 38; occupation, assistant superintendent of the Adams Express Company; residence, Cincinnati.

Q. 2. What experience, if any, have you had in express and railroad business?

A. I have been engaged in both, but principally in the express, for twenty-three years.

Q. 3. Please define the express business, how it is conducted, and especially explain what is meant by accessorial service, and what is meant by railroad service in the express business.

A. Well, the accessorial service is all of the service of an express company, except the hauling of the matter on the train.

Q. 4. Will you briefly state, Mr. Weir, the history of the transportation of a piece of express freight from the moment it begins to move until it reaches its destination?

A. You mean a sort of illustration?

Q. 5. Yes, sir, by way of illustration; so as to give us an idea of all the service that is performed for the transportation of a piece of express freight.

A. Well, the transportation of a piece of express freight, that is, express freight pure and simple, would be, first, the sending of a driver with a horse and wagon to the store of the shipper, getting the piece of freight, issuing a receipt for it, taking 974 that to the office, where it is weighed, then entered upon a way-bill, then given to the messenger, who gives a receipt, what we call a check; he gives his initials, the initials in a way-bill indicating that he had received the piece of freight. It is then loaded by the porters into a wagon, with the messenger, carried to the depot, where the porters unload it, put it, with the messenger's safe and chest, into the train, and it is by the train conveyed to destination; at the destination it would be unloaded by the porters.

Q. 6. Whose porters?

A. Our porters, and conveyed to the office, the way-bills checked there by the clerk receiving it, by him put in custody of the person who could distribute it into its proper locality, distribute it to its proper place in the office for delivery. There it would be written up on the delivery book, taken out by the driver and delivered to the consignee, and his receipt taken. Sometimes that is simplified. I am taking that as the shipment of an ordinary parcel; but there are C. O. D.'s on freight; then there is some freight that we take, and agree to take a box to destination, but not deliver it until we receive another box in return. Some of these encyclopædia agents deliver one box of Appleton's Encyclopædia and agree to take back the Encyclopædia Britannica. So we are made agents for that trade, and we take a box of books down, and in return receive the other box of books. The illustration I have given you is an ordinary piece of freight.

Q. 7. Now, in this transportation, state whether or not this piece of express freight—well, state in whose custody a piece of express freight is, from the beginning to the end of its journey; whether in the custody of express or railroad officials, or both.

A. Oh, it is entirely in the custody of our own employees; entirely so.

Q. 8. Mr. Weir, state if you have any knowledge, from your experience, what proportion the value of this service that is performed in the transportation of this freight by the railroad company bears to a fair compensation for the whole service of transportation.

975 Mr. Thoroughman: How much of a given sum should one have, and the other have, he means. Is that it?

Col. Whitfield: Yes, sir.

A. I gather what you mean. Well, our estimate of the accessorial service is, that it is about fifty per cent. of the receipts, and that of the remainder about forty per cent. should be paid to the railroad company. Does that convey what you want?

Q. 9. Yes, that is about the same. You are stating, I presume, about what was the cost of it?

A. Well, there is about ten per cent. margin between the two costs.

Q. 10. Then, if the entire service of transporting a given package between two points by express is worth one dollar, how much of that sum is a fair compensation to the railroad for the part of the service it performs?

A. Well, for a one-dollar parcel the forty per cent. would be a very good payment to the railway company. I mean it would be a handsome payment instead of very good.

Q. 11. Mr. Weir, if you know, state what the Adams Express Company pays the railroads operated by it, and running into the city of St. Louis, for express transportation?

Objected to by counsel for defendant, on the ground of irrelevancy and incompetency.

A. We pay the St. Louis, Vandalia & Terre Haute forty per cent. of the receipts; St. Louis & San Francisco forty per cent. of the receipts; St. Louis & Southeastern forty per cent. of the receipts; Cairo & St. Louis one and a half first-class freight rates on the freight carried; and the Cairo Short Line one and a half first-class freight rates on the freight carried. Those two last contracts are by weight.

Q. 12. State whether or not your company could pay more than those prices, materially more than those prices, and profitably conduct the express business over those railroads?

Objected to by counsel for defendant, as incompetent and irrelevant, and besides, it is asking for the opinion of the witness.

A. No, sir; they could not.

Cross-examination by Mr. THOROUGHMAN:

Cr.-Q. 1. Mr. Weir, you were the agent, at Cincinnati, of the Adams Express Company? A. Yes, sir.

Cr.-Q. 2. Have you been at it for a long time? A. Yes, sir.

976 Cr.-Q. 3. You have stated to Gen. Whitfield that you could not render those services to the public that you have spoken of for any less sum, materially less sum, than that you have named. Now, will you state to us what profits you have made; say take the last current year, what have been the profits to this company? A. That I could not answer.

Cr.-Q. 4. Could you refer to your books and give it? Could you tell us what the gross receipts were? A. No, sir.

Cr.-Q. 5. Could you refer to your books and tell us?

A. No, sir; our books do not show it.

Cr.-Q. 6. Your books would not show it? A. No, sir.

Cr.-Q. 7. Don't you make up any balance?

A. Those books are kept in New York.

Cr.-Q. 8. The books that would show the gross and net earnings are kept in New York? A. Yes, sir.

Cr.-Q. 9. Upon what do you form the opinion, then, that you gave to Gen. Whitfield?

A. It is a matter of education with us. Every expressman learns by experience the cost of doing business; what is a profitable contract and what is not a profitable one.

Cr.-Q. 10. Well, now, with your experience, ain't you able to say whether or not the express companies have made money in doing an express business? A. Oh, I have been led to believe that it always made money.

Cr.-Q. 11. Don't you know, Mr. Weir, that they have made very large profits, and been accumulating a very large sum of money—the Adams Express Company?

A. I only know from general statements. I know other gentlemen connected with the company have said to me that they have made large amounts of money from the express business, and I presume it is so.

Cr.-Q. 12. So that it has been profitable in a large sense, has it not? A. Up to and just after the close of the war it was.

Cr.-Q. 13. Has it not been more profitable since the war than it was before?

A. Oh, no, sir. Great profits in the express business were made during and at the close of the war.

Cr.-Q. 14. Well, of course there was more Government goods moved during and before the war than have been since.

A. That was a great profit.

977 Cr.-Q. 15. Well, the last current year has been very profitable to the express company, has it not?

A. I could not say as to its being very profitable; they have done a large business. I notice that the American and United States Express Companies have made very small dividends.

Cr.-Q. 16. Now, Mr. Weir, you have stated that you have had some railroad experience. In what connection did you get your experience?

A. I ornamented a country station in Illinois a short time.

Cr.-Q. 17. In Illinois? A. Yes, sir.

Cr.-Q. 18. When was that? A. From about 1857 to 1861, somewhere around in there.

Cr.-Q. 19. You have stated that the railroads could profitably carry the express matter that you furnished at forty cents out of any given sum that you charge the public at the——

A. No, you misunderstood me. The illustration that was given me was on a package which would produce one dollar, how much of that would be a fair compensation to the railroad company. I said that forty cents of that was a very handsome compensation for the railroad for that package.

Cr.-Q. 20. Now, let me ask you, right in that connection, to state if the express companies haven't a rule by which they guide themselves in their charge to the public, and if the basis of the rule is not the fact of whatever amount they are called upon by the railroad companies to pay to them? In other words, if you pay the railroad companies forty cents out of a dollar, you charge the public then sixty cents. Ain't that it?

A. Well, our rates are made in nowise different from the rates made by a man who sells any manufactured goods. The first basis of cost with him is the cost of manufacturing. So it is with us. We cannot make our rate until we have established a contract with the railroad company, fixing a basis of calculation.

Cr.-Q. 21. You first contract for the services of the railroad company? A. That is it.

Cr.-Q. 22. Like the manufacturer finds the cost of the article?

A. Exactly.

Cr.-Q. 23. You make a contract, and then charge the public by schedule prices? A. Yes, sir.

978 Cr.-Q. 24. Making your margin for profit?

A. We add to the amount to be paid for the service our cost, and then a fair margin for profit.

Cr.-Q. 25. About what per cent. do you add above this contract that you make with the railroad companies?

A. Our calculation is on the basis which I have given you.

Cr.-Q. 26. That is to say, sixty cents on one hand and forty cents on the other? A. Yes, sir.

Cr.-Q. 27. Now, then, I will ask you to state if all your carriage upon railroads for years past has not been under stipulations and contracts with all the railroads?

A. I believe with all of them.

Cr.-Q. 28. Without an exception?

A. Yes, sir; either written or verbal.

Cr.-Q. 29. Now, this sixty per cent. that you named, of course, is to include all the services of whatever nature which you perform for the public? A. Yes, sir.

Cr.-Q. 30. Accessorial and every other?

A. Accessorial service and our profit.

Cr.-Q. 31. It is to include the accessorial service and whatever profit you get or expect to get? A. Yes, sir.

Cr.-Q. 32. I want to ask you, I think, but one more question, unless it is suggested to me. Have you ever had any experience with railroads on the western side of the Mississippi river, in this country? A. No, sir.

Cr.-Q. 33. Now, are you able to speak, from your railroad information, aside from your express knowledge, as to what would be a fair profit for a railroad to make in a country like Southeast Missouri or Arkansas?

A. I don't know anything about their prices, but I don't know that they would differ any from other roads.

Cr.-Q. 34. Here is what I mean: I ask you if you have had such experience as a railroad man as to enable you to tell us this. We know it ourselves that it costs much more. That is to say, that a railroad, being operated in a sparsely settled country, must necessarily charge much more money to make any profit than it would in a populous country like Ohio, Pennsylvania, or Illinois.

A. Not that the cost would be any more to run the road.

979 Cr.-Q. 35. No; but they must charge more to make any profit at all, because they have got a great deal less passenger and freight business to make any money out of.

A. I have no experience on that subject.

Cr.-Q. 36. You could not speak upon that subject?

A. No, sir.

Signature waived.

ROBERT MEEK, a witness for plaintiff, being first sworn, testified as follows:

Direct examination by Mr. **Seward**:

Q. 1. Mr. Meek, about what is your age?

A. Fifty-six years old.

Q. 2. And your occupation?

A. I am superintendent of a railroad.

Q. 3. How long have you been connected with the railroads of the country? A. Since 1847.

Q. 4. Please state upon what railroads, and in what capacity.

A. I was on the Little Miami road, hauling iron to build it first as engineer—locomotive engineer.

Q. 5. Please state all the railroads with which you have been connected, and in what capacity you have been connected therewith? A. I was on the Mud River & Lake Erie railroad, as engineer, in an early day; that must have been 1849; now, it is changed to Sandusky & Cincinnati, I believe.

Q. 6. Any other railroad? A. Yes, sir.

Q. Well, please state them all, and the different capacities in which you served?

A. Madison & Indianapolis railroad, Shelbyville Lateral Branch & Knightstown railroad; those roads have been abandoned now. The Lawrenceburg & Upper Mississippi, which is now the Indianapolis & Cincinnati—on that 17 years; the Memphis, Clarksville & Louisville, which is now a part of the Louisville & Nashville; South & North Alabama, the Elizabethtown & Paducah, now; that is all.

Q. 8. In what capacity are you now engaged?

A. General superintendent of the Elizabethtown & Paducah road; but I have been in that capacity for a number of years, on different roads.

Q. 9. How long is the Elizabethtown & Paducah road?

A. One hundred and eighty-six miles now.

Q. 10. All in one State? Yes, sir.

Q. 11. Which? A. State of Kentucky.

980 Q. 12. What is the average rate of speed of the ordinary freight trains of the country?

A. Well, twelve to fifteen miles an hour.

Q. 13. Are freights ever moved on a railway by any other than a freight train proper?

A. Yes, sir; frequently moved by mixed trains.

Q. 14. They are composed of what?

A. Composed of passenger and baggage car, and freight cars.

Q. 15. What is the average rate of speed of a mixed train?

A. Fifteen to twenty-three miles an hour.

Q. 16. Assuming a well equipped road, having a fair share of freight business in both directions, what is the average charge to the public of moving a ton of freight, by an ordinary freight train, per mile?

Objected to, by counsel for defendant, as irrelevant and incompetent.

A. Well, about a cent and a half to the public, latterly.

Q. 17. What is the carrying capacity of an ordinary freight car? A. Rated at about twelve tons now, sir.

Q. 18. Which would be, at the rate you have mentioned, a cent and a half a ton per mile, eighteen cents for moving that car loaded with freight one mile. Will you please state, with some particularity of detail and specification, all the deductions which a railroad company makes from that charge of a cent and a half per ton per mile as and for the cost of moving that ton of freight a mile?

Objected to, by counsel for defendant, as being irrelevant and incompetent.

A. Everything that enters into the cost of moving anything on a railroad—repairs of engines and track, expense of station agents, fuel, cost of equipment, interest. There are twenty or thirty classifications that would enter—loss and damage to freight; everything that enters into the making up of cost of moving a ton of freight a mile; all the general classifications, which are some twenty odd.

Q. 19. You have mentioned three or four or five subjects—matter of deduction, saying that there were some twenty or thirty different
classifications. Will you kindly state, with as much detail as
981 you can, all the items, so that I may have it upon the record
which relates to their taking from their charge to the public?

A. I would have to refer to the classifications. I can mention it generally.

Q. 20. Well, generally.

A. Well, repair of engines, repair of track, repair of freight cars, station agent's salary, fuel for stations, oil for stations, loss and damage to freight, telegraphing, oil for trains, water for trains, brasses for trains, train equipment, switch-ropes, lanterns, damage to person and freights, stationery for stations—gentlemen, the detail is voluminous.

Q. 21. Is the compensation of fireman and engineer in the cost, and fuel on the locomotive?

A. If they are on freight service, all goes into the cost.

Q. 22. Suppose that there were a loss of freight, for illustration, by fire, which the railway was obliged to make good, what would be done with that amount?

A. Well, some roads would charge to general expense, while others would charge it specially to freight, where it belongs.

Q. 23. Mr. THOROUGHMAN: That is the proper place for it, too? A. Yes, sir.

Q. 24. Mr. SEWARD: Suppose that there was litigation connected with the recovery of the amount, to what would the expense of such litigation be charged?

A. Such expense would be charged to the freight; that is, divided with the freight and passenger and general expense, what we call general expense. There are divisions of that.

Q. 25. Assuming that the usual charge per ton per mile for moving freight for the public is a cent and a half, what is the average percentage of deductions from such charge for cost?

A. Well, that varies very materially. It goes from 50 up to 70 per cent.; varies very much upon the roads; the different characters of roads; heavy or light grades.

Q. 26. Well, is from 50 to 70 a fair average?

A. No, I think the average would be 55 to 60 per cent. I have never figured it upon the general average of the roads of the country; only on special roads that I have had occasion to.

982 Q. 27. And deducting that would show the profit to the railroad, the average profit to the railroad for the movement of the freight?

A. Yes, sir; for the movement of the freight.

Q. 28. How fast does a mixed freight train run?

A. A mixed freight train; well, from 15 to 23 miles an hour.

Q. 29. How much additional charge is made to the public for transporting freight by the mixed train over what is made for transportating it by the freight train proper?

A. None that I know of, generally. That is done for your own convenience, to move your passengers.

Q. 30. What is the ordinary average speed of passenger trains, express trains?

A. Well, it ordinarily would be about twenty-five miles an hour, I should judge.

Q. 31. Assuming that the speed of the freight train is increased from 12 or 15 to 25 miles an hour, what additional element enters into the cost of moving the train, by reason of such increase of speed?

A. Well, nothing but velocity.

Q. 32. Additional element of cost?

A. Yes, sir; there is wear and tear according to speed is greater.

Q. 33. Mr. THOROUGHMAN: Takes more fuel?

A. Yes, sir.

Q. 34. And better machinery?

A. No, I don't know that machinery would make any difference. Additional fuel, employees, additional wear and tear to the track.

Q. 35. And then to the wheels? A. Yes, of course.

Q. 36. Mr. SEWARD: The other element of course, then, I understand, would be the same whether the train was running at 15 or 25 miles an hour? A. Yes, sir.

Q. 37. Now, can you state how much more fuel is consumed when running at 25 miles an hour over what is consumed when running 12? A. Well, as near as my calculations have gone, about ten per cent., I judge.

Q. 38. Does your experience enable you to state what percentage of increase of wear and tear arises from the fact that one train moves at 25 and the other at 12 miles an hour?

983 A. Well, that has been a matter we have figured on a great deal. It certainly, in my judgment, would not be over ten per cent.

Q. 39. Then do I understand, am I to understand, that if twenty per cent. be added to the cost of moving a freight train at twelve miles an hour, it will cover all the additional cost incurred by moving the train at twenty-five miles an hour?

A. Yes, sir. That is, you have reference to freight and passenger trains, now?

Q. 40. Yes, sir.

A. Yes, sir. You see, there is a matter that enters into the movement of a passenger train, which is the character of the car. It is hung on light springs, and reduces the blow, the concussion to the train—a difference between freight and passenger.

Q. 41. That is characteristic also of the baggage car?

A. Yes, sir; baggage and passenger cars generally hang alike.

Cross-examination by Col. **Broadhead**:

Cr.-Q. 1. It costs more to run a freight train than a passenger, on an average?

A. Yes, sir; costs more. That is, your labor is more, labor expense, but the actual cost to the company, of the track and everything, would be a little greater in the velocity of a passenger train than it would in a freight; hence, the cost is more.

Cr. Q. 2. That is, the cost is more to the company to run a passenger train than a freight?

A. The actual cost would depend upon the number of cars you haul in a passenger train. Some are composed of three cars, others of five, others ten. The length of a train has a great deal to do with that.

Cr.-Q. 3. Then it is very difficult to make an average of the difference in the cost of trains?

A. Different roads make an average for themselves. Here is one train runs three cars regularly all the time, and another one runs six or eight cars; and all these things depend upon these contingent circumstances. Some do not haul Pullman Palace cars behind. It is weight, not——

Cr.-Q. 4. Statistics show that in different parts of the country
the cost of running passenger trains is more than running
984 freight trains. You say the cost, on an average, is a cent and
a half per ton per mile? A. To the public.

Cr.-Q. 5. That is, the public is charged a cent and a half per ton per mile, on an average? A. Yes, sir.

Cr.-Q. 6. That is the gross receipts of the road from the public? A. Yes; the charges paid by the public would, on an average, be about a cent and a half per ton per mile.

Cr.-Q. 7. You have been on roads running through the State of Ohio and Indiana, and on the Southern roads?

A. Southern roads; yes, sir.

Cr.-Q. 8. Well, there is a very considerable difference in the cost to the railroad company, between the roads in Ohio and the roads in the Southern States, is there not?

A. Well, in some of them. Some of the roads in the Southern States are very heavy. The one I was on was one of the heaviest roads. The Pennsylvania Central is no heavier than the Southern Alabama.

Cr.-Q. 9. Have not those charges varied since your railroad experience began, since 1847? A. Yes, sir; very materially.

Cr.-Q. 10. You speak of what is the average now?

A. Yes, sir; and has been.

Cr.-Q. 11. What does it cost between Indianapolis and Madison, in Indiana?

A. That is a very heavy road; one of the worst in the country, because they have a grade of 300 feet to the mile, and have to run up by peculiar machinery adapted to the grades.

Cr.-Q. 12. How is it between Cincinnati and Columbus?

A. That is a very fair average road.

Cr.-Q. 13. Have the charges increased or diminished in proportion to the amount of transportion that has come upon the railroads? A. They have diminished according to the amount of transportation.

Cr.-Q. 14. That is because the railroads can afford to do a large amount of business for a less rate than they can a small amount of business? A. Yes, sir.

Cr.-Q. 15. The road between Cincinnati and Cleveland could afford to do business for less than the road between St. Louis and Little Rock, I suppose, could it not?

A. Well, I don't know mnch about the St. Louis and Little Rock road; never was on it.

985 Cr.-Q. 16. How is it between Louisville and Nashville?

A. That is a pretty heavy road. That will average with the general road of the country; a little heavier than the general roads of the country; seventy-one-foot grade, I think; have to use heavy power.

Cr.-Q. 17. From this one and a half cents per ton per mile you take the cost of transportation by the railroad, and that includes what?

A. Everything entering into the cost of movement.

Cr.-Q. 18. You speak of loss of freight by fire. You say that ought to be charged to freight?

A. If it is freight, it is chargeable to freight?

Cr.-Q. 19. Nevertheless it is taken out of the gross earnings of the road? A. Yes, sir; loss and damage account.

Cr.-Q. 20. Then it is taken out of the gross earnings in order to arrive at the net earnings of the road?

A. Everything that is charged to freight has to be taken out.

Cr.-Q. 21. That is only one item.

A. That is one item taken into account to make up the cost. It is loss and damage chargeable to freight. That is the way we classify them.

Cr.-Q. 22. You have never been on any road west of the Mississippi river, I suppose?

A. No, not to be employed on it; never traveled much on them, either.

Cr.-Q. 23. From what is in the items of expense to be deducted from gross earnings on the road, one and a half cents per ton per mile, I believe railroad men never include interest on railroad bonds?

A. Yes, that is included on some roads. Take the Portsmouth, Louisville & Nashville, it is included.

Cr.-Q. 24. Is not that a legitimate part of the expense of running a road?

A. That is a legitimate part to be taken out of the earnings, because you have got property, and because you have got to make your money out of the property.

Cr.-Q. 25. What is the difference, including the matter of interest, between the highest and the lowest of those roads that you are acquainted with yourself?

986 A. That would be a difficult matter for me to answer just now. There were some roads building; their bonds sold perhaps at fifty cents on the dollar, and now they are getting par. Nobody can tell that, unless he has been in a position to know. While the cost of the road shows to the stockholders so much, the road has cost more than that. For instance, they issued a hundred thousand dollars of bonds, and they sold those bonds for sixty cents on the dollar, and have got to pay the interest on the full face of the bonds.

Cr.-Q. 26. I don't know whether you understand me or not. You have given us an average of one and a half cents per ton per mile as the cost of the public charged by railroads for transportation. How did you arrive at that average?

A. Well, I arrived at that from their reports, published reports, and from roads that I have been connected with, in making up the cost of earnings.

Cr.-Q. 27. From published reports of roads you are acquainted with, and roads you have been in connection with?

A. Roads whose reports I have read and studied, and reports of roads which I have been connected with.

Cr.-Q. 28. Embracing how many roads?

A. I could not tell you that.

Cr.-Q. 29. About how many miles of road?

A. That I could not tell you.

Cr.-Q. 30. Now, I want to ask you if you have ascertained from your own experience, and from the tables from which you speak, what is the maximum and what is the minimum charges of those roads from which you derive your average; that is, the greatest and smallest amount?

A. Well, I think the maximum is about, perhaps it is five-eighths, nearly five-eighths, of the mileage that they have.

Cr.-Q. 31. Sir? A. Five-eighths of the greatest mileage that they have, that I have been familiar with. For instance, the greatest mileage in Ohio and Kentucky and Indiana, and also some of the New England States, that have made up their reports, five-eighths of the mileage for different States; the total amount of the——

Cr.-Q. 32. I don't know that I understand you. You undertake to make an average of the cost to the public for transportation? A. Yes, sir.

987 Cr.-Q. 33. You take a railroad in Massachusetts, for example, and look at their reports, and ascertain what the cost per ton per mile is in that State? A. Yes, sir.

Cr.-Q. 34. And take another in the State of Alabama or Kentucky—that between Louisville and Nashville, for example—and ascertain, from your own experience, the cost per ton per mile; and take another in Ohio, and another in Indiana.

A. Yes, sir.

Cr.-Q. 35. And then add those together and make an average. I want to know what is the highest charge per ton per mile over the roads you have been accustomed to?

A. The highest, I think, used to be probably two cents, as near as I can tell now.

Cr.-Q. 36. And the lowest?

A. The lowest about—well, the lowest has been a little less than a cent; ninety-eight hundredths of a cent.

Cr.-Q. 37. Your idea is, that when these charges are made by railroads of the gross charge, at whatever it may be per ton per mile, it is to enable the road to do a living business?

A. Yes, sir; that is my idea.

Cr.-Q. 38. Well, they are very often mistaken in that, ain't they?

A. Some of them are.

Cr.-Q. 39. They are wound up and become insolvent?

A. A great many.

Cr.-Q. 40. What road do you say you are on now?

A. The Elizabethtown & Paducah. That is a road that has been wound up.

Cr.-Q. 41. Because it didn't charge enough, did it?

A. Well, I reckon it charged enough. We are charging less now, and making some money.

Cr.-Q. 42. Managed better now; you run it now?

A. Yes, sir; partly.

Signature waived.

I, H. R. Probasco, commissioner appointed by your honorable court to examine such witnesses as might be produced before me on behalf of the plaintiff in the above cause, do respectfully report and certify:

That I have been attended by the counsel for the respective par-
ties and by the witness, and said witnesses, having been by
988 me severally cautioned and sworn to testify the truth, the
whole truth, and nothing but the truth in the matter of con-
troversy, and being examined and cross-examined by the said coun-
sel, respectively, they did depose, testify, and say as appears by their
several depositions hereunto annexed.

I do further certify that the various exhibits to the said depositions annexed were duly introduced in evidence in the said cause in the said examination before me.

Dated at Cincinnati, the 7th day of February, A. D. 1881.

H. R. PROBASCO,
Special Examiner.

989 *Depositions.*

In the Circuit Court of the United States for the Eastern District of Missouri.

THE SOUTHERN EXPRESS COMPANY
vs.
THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

Depositions of witnesses on the part of the defendant, taken before L. L. Walbridge, special examiner in the above-entitled cause, at the law office of Thoroughman & Pike, northwest corner Fifth and Market streets, in the city of St. Louis, beginning on the 19th day of November, 1880.

Present: J. R. Shepley, for plaintiff; Thos. Thoroughman, for defendants.

JAMES AIKIN, of lawful age, being produced, sworn, and examined, testified as follows:

By Col. THOROUGHMAN:

Q. What is your name?
A. James Aikin.

(By consent of parties the further taking of this deposition was continued until Monday, November 22, 1880, at 2 p. m.)

990 MONDAY, *November* 22—2 p. m.

Parties met pursuant to adjournment. Present, as before. The taking of depositions in this case was resumed as follows:

JAMES AIKIN, having been previously sworn, deposeth and saith:

By Col. THOROUGHMAN:

[Q.] What is your age?
A. Forty-eight.
Q. What is your business?
A. At present superintendent of the express business on the Iron Mountain railroad.
Q. How long have you been engaged in the business of expressing goods and packages?
A. I have been connected with the express service something over eighteen years.
Q. How continuously have you been in it; constantly?
A. Yes, sir.
Q. Where; at what places?
A. In New York State the whole of the time previous to coming here last spring.
Q. In what capacity have you been engaged; in the active operation of the express business? Have you been actively engaged in the operation of the transit business?
A. Yes; I have been messenger on the railroad, agent for the company, local agent at two different points, and I have been route

agent in charge of certain territory for the American Express Company.

Q. With what companies were you connected before coming to Missouri?

A. With the American Express Company only.

Q. Can you say whether you are familiar with the operation of an express company or an express department of a railroad company?

A. You mean by that question——

991 Q. Are you familiar enough to give the object and purpose of a railroad company operating its own express?

A. Yes; I am familiar with the express service, and somewhat familiar with the operations of the railway expresses.

Q. You have stated you are now managing the express department of the Iron Mountain Railroad Company?

A. Yes, sir.

Q. Now, from your knowledge of the express business, I want you to state what, in your opinion, there is in the nature of the business or its transactions to prevent a railroad company from having an express department, and serving the public as well and as expeditiously and as safely as any express company could do it?

(Objected to, as incompetent and irrelevant.)

A. I know of no reason why the railroad company could not do an express business over its line as well as an express company operating independent of the railroad could do it.

Q. Now, what impediment, if any, exists in the express department of a railroad from transacting business in the way of collecting money, collecting negotiable securities, carrying express packages that are called C. O. D. packages, etc., any more than there would be to prevent an express company from doing the same business?

(Objected to, as incompetent and irrelevant.)

A. Well, I don't know any reason; the express service, when conducted by an express company, is largely done by agents of the railway along its line; that has been their practice, to make the railroad agents the agents of the express company when they are operating on any line of railroad, whenever it can be done; they make the same men largely do the business, when done by the railroad itself, that do it when it is done by the express company.

992 Q. If I understand you, the converse is true, when the express company is carrying money or C. O. D. packages and collecting negotiable securities, that it is done through the hands of the agents of the railroad company, who are also employed by the express company?

A. Not exclusively done by them, but largely done by them; and I think the railroad company has better control over those men, to do the business with greater promptness, and can better enforce obedience to orders than any express company can when employing the same parties.

(Objected to, as incompetent and irrelevant.)

Q. They are under better rules of discipline; is that what you mean?

A. Yes; to explain, now, we will take a railroad agent at some minor place upon the railroad here, and every well-regulated express company has to have certain regulations for its conduct; well, this man may be unskillful, and they reprimand him for it, and he says: "If you don't like the way I do the business you better get somebody else to do it;" whereas with this man a larger part of his business is with the railroad; he is subject to their discipline and control, and he is a great deal more obedient to orders when they are part and parcel of the railroad system to orders relating to the express service than when it is conducted by outside agents; I have seen that demonstrated since I have been operating on this road.

Q. What in the nature of the express business is there in the way of presenting notes and collecting notes transmitted through the hands of your department that would prevent you from rendering just as efficient service in that regard as the express company?

(Objected to, as incompetent.)

A. There is nothing.

993 Q. How is it with reference to the same persons being employed by the railroad company heretofore and the express company in the receipt and transmission of articles sent by express; I mean did the same employés and hands gather it up heretofore for the express company that did for the railroad company, or were separate men engaged in that business?

(Objected to.)

Q. What I mean is this: You have stated heretofore in your examination that the same individuals would be employed to do certain duties by the express company, and at the same time were discharging certain duties for the railroad company, haven't you?

A. Yes, sir.

Q. Now, what I mean to ask is, was this negotiable paper and this money and those other things handled and carried to their destination then as now?

(Objected to.)

A. Well, I meant in my answer to that question to state any express company from the very nature of its business doing business over a line of railway of necessity employs largely of the railroad employés to transact its business; and I think the majority of the men doing business for the express department of the Iron Mountain railroad are employés of the railway in a capacity aside from that, and previous to the organization of this express department were in the employ of the Southern Express Company in doing its express business along the line of the road, that is, I mean a majority of the local agents.

Q. So that heretofore in the instances that you have named the public were served by men actually engaged on the railroad?

(Objected to.)

A. They were largely; yes.

Mr. **Shepley**: You are now speaking of the condition of things that existed prior to the time that the express department was organized, is that it?

994 A. Yes; of the local agents employed along the line of the road; a majority of them were agents of the railway company at the same time.

Q. You are speaking of the time prior to the organization of the express department, are you?

A. Yes; and that now a majority of the local agents we have at minor stations along the line of the road were, previous to the organization of this department, doing the express service at the points where they lived for the Southern Express Company. When I say a majority, I speak only approximately; but I think in my opinion a majority of them; I could state precisely.

Q. Mr. Aikin, I will get you to state now what the facilities in St. Louis and along the line and at the terminus of the line of your road, the Southern Express Company, has for doing business, gathering up freight, and transmitting it that you have not; whether you have not just as good facilities, and then tell us what they are, as the Southern Express Company?

A. Do you mean equipage, safes, etc.?

(Objected to, as incompetent.)

Q. Yes; collecting parcels and delivering them and all that?

A. Well, I think they have no facilities for collection, delivery, transmission, and safe-keeping of freight or money packages or valuables that the railroad company does not possess.

Q. Now, if you are familiar with facilities, wagons, horses, safes, hands, depots, stations, etc., here in the city and along the line of the railroad company—first, you may tell what they are, and tell us how they compare with the same articles furnished or held for public benefit by the express company?

A. You mean their proportion of capacity for carrying?

995 Q. Yes; I mean this: what they have provided in the way of safes, horses, wagons, room, and everything that you have not provided, and how the two compare with each other?

(Objected to, as incompetent, etc.)

A. Well, our equipage, you might term it, for the safe conduct of the business, is better than has ever been had by the Southern Express Company upon this line of road. We have got more in number of safes than they have ever had; we have got, perhaps, three times the number. Our safes are all burglar-proof, as well as fire-proof, and we have the same character of safes in our cars, that renders it almost impossible for a robbery to take place upon the train by outside parties. For instance, we have a shipment of money to Little Rock—a large amount of money; it is put in a burglar-proof safe as well as a fire-proof safe. A messenger on the train has no access to that, and the agent at Little Rock has the combination to that burglar-box, and when it gets there he can open and remove it. If the train is wrecked on the road there is no possibility of robbers or thieves getting into it under ten or twelve hours, if they have free access to it. I feel safe in saying—in fact, I know—we have better equipment in that respect than any express company in the country, on the same number of miles of road.

Q. Well, now, what does that equipage include in the way of horses, wagons, etc., if anything?

(Objected to.)

A. What I said had reference to the safes of the local offices and on the trains. In regard to equipage, horses, wagons, etc., we have all that the business requires in the territory we operate in; sufficient to do the work.

Q. Now, does that remark apply to the place of receipt and collection of articles, as well as the delivery?

A. Yes, sir.

996 Q. You mean to include the place of delivery as well?

(Objected to, same as before.)

A. Yes, sir.

Q. How does it compare as to safety of property entrusted to the department of this road with the Southern Express Company's provisions to serve the public—is it as good, or better, or not so good?

A. Well, our equipage for the collection and delivery of goods in town and along the line, I think, is as good as theirs in every instance. I know of many places it is better. At Texarkana we have a delivery better than they; at every point, I think, equally as good; but, in the main, I would not say ours is any better than theirs, but I think in every instance it is as good as theirs.

Q. How long have you been operating this express department of the Iron Mountain railway?

A. Since the first of June of this year.

Q. How has its business been, as to volume, compared with the business of the Southern Express Company, over the line of your road?

(Objected to, as incompetent and irrelevant.)

A. What, local business? We have done more than they.

Q. If you can tell now how or whether the public is as well satisfied with the service you are rendering as it is with the express company, you may state it; or whether it is better satisfied with the services now being provided for the public, you may state that also.

(Objected to.)

A. All I know is what I have heard shippers say in reference to that.

Q. State it.

A. I have at different times heard shippers in this city, patrons at Cairo and Little Rock, express themselves as well pleased with the service rendered, and express satisfaction at the rates charged 997 and the manner the business was conducted, and from the expression of those people I am warranted, I think, in saying that they are equally and better satisfied with the business, as a whole; but I presume the reason of their better satisfaction is that the rates are a little less than they were when the line was run exclusively by the Southern Express Company.

Q. Now, you may tell, if you know, whether or not the public is being served at a less rate of charges than it was before the organization of the express department of the Iron Mountain railroad?

(Objected to.)

A. Yes, sir; they are. I do not wish to be understood as saying that the public are satisfied that we are doing the business any better.

Q. But they are satisfied from the expressions you have heard that you are doing it as well, are they not?

A. As I have heard no complaint that it is not, I have reason to think that it is.

Q. You say you attribute this satisfaction with the manner that you are doing business to the fact that it is because you are doing it for less money than it was therefore done by the Southern Express Company?

(Objected to.)

A. Yes. I do not wish to be understood as saying we are doing business better than the Southern Express has done it, but the public is better satisfied because we are doing it for less money.

Q. Are you doing it equally safe?

A. I think we are. Yes.

Q. Mr. Aiken, is there any safety or responsibility to the public in the hands of, or at the hands of, the Southern Express Company, that is not at the hands of the railroad company?

(Objected to, as irrelevant.)

A. I know of none.

Q. You have been in the express business for eighteen years, I believe?

998 A. I have, yes; I think I know there are no facilities for the safe and speedy transaction of the business enjoyed by the Southern Express Company that this railroad does not enjoy. It has every facility for safety, and even greater facilities than the Southern Express Company, for the reason before given in my answers. We have better equipage for doing this work; a more expensive one, and a safer one, than any express company with which I am acquainted, has on the same miles of road.

Q. What do you do with reference to sending agents with express matter, if anything? Do you send agents with that express matter?

A. We pursue the usual course of express companies in sending messengers on the train in care of goods in transit—goods and valuables.

Q. Do you know anything about the Iron Mountain railroad having done an express business—I mean of your own knowledge—before the Southern Express Company came upon this line eight or nine years ago?

A. I do not; only as I have heard it remarked by others; not of my own knowledge.

Q. Do you know of your own knowledge anything in reference to the Little Rock & Memphis road now doing its own business?

A. Yes. The Memphis & Little Rock railroad, you mean?

Q. Yes, the Memphis & Little Rock road.

A. Yes, sir.

Q. You say they are now doing an express business under an organized department of their own?

A. Yes, sir.

Q. Do you know anything about the services of that department to the public?

A. Yes, I do; I am superintendent of that department on that road.

999 Q. Now, in reference to the speed and responsibility and safety with which that business is done, you may state in comparison with the former services rendered by the Southern Express Company on that line.

(Objected to.)

A. I think it is as perfect in its working as the express department of the Iron Mountain railway, and it is every——

Q. Do you mean the Iron Mountain or the Southern Express?

A. As the express department of the Iron Mountain railway, or the service of the Southern Express Company on the line you mention. That railroad has that department organized; has the facilities for receiving, delivering, and collecting freight; safes upon the train, and safes at many of the stations along the line of the road at points where the Southern Express Company had no safes, and I do not know where, in any particular, the service is inferior in any way to that rendered by the Southern Express Company.

Q. Mr. Aiken, are you acquainted with the railroad called the Ohio & Mississippi railroad along the east of us here?

A. I know its location, yes.

Q. Do you know anything about the organization of that road as to an express department?

(Objected to.)

A. That road is doing its own express business.

Q. Do you know anything about the satisfaction with which it is doing that business to the public?

A. I am not entirely familiar with the patrons along the line of the road; I can only judge from the consignees here; I know they bring largely of the oyster shipments from Baltimore, and are well patronized at different points along the road.

Q. Do you know anything of the Denver & Rio Grande railroad, in Colorado?

A. I do not; no, sir.

1000 Q. Have you information so you can state as to whether it is running its own express?

(Objected to.)

A. I don't know of my own knowledge.

Q. Do you know about the Union Pacific railroad?

A. The Union Pacific has been doing its express business for some years.

Q. Do you know about how long?

A. Well, sir, I can't tell you the precise time.

Q. Isn't it more than ten years?

A. I would not undertake to say; I am only speaking from memory.

Q. You can't tell the time?

A. No, sir; I know very nearly all the time since the road was in operation.

Q. Do you know whether or not the Missouri Pacific does its own express business?

A. I do not.

Q. Do you know anything about the Louisville, Nashville & Chattanooga railroad doing an express business?

(Objected to.)

A. They are doing an express business over their line of road.

Q. Do you know about how many miles of railroad they have?

A. I cannot say, sir.

Q. I will suggest to you and ask if [it] is not about two thousand miles?

A. I think it is between fifteen hundred and two thousand miles; I am not positive, though I heard their superintendent say too.

Q. Now, state if you know anything about an express department, if there is such a thing, of the Baltimore & Ohio railroad?

A. Yes, there is such a department.

Q. How long has that department been in operation, or about how long?

1001 A. I think six or eight years; I cannot say precisely the time; I remember well when it took place, but I have not the dates in my mind.

Q. Now, there is a little road running from Philadelphia—the Philadelphia & Reading road—do you know anything of their operating an express department?

A. They are operating their own express; yes.

Q. How long, if you can fix in your mind, have they been thus operating?

A. I can't say definitely in regard to that, but I think six or eight years at least.

Q. Do you know anything about the New Albany & Chicago railroad, as to their operating an express?

A. It is said they are.

Q. Do you know how long they have been operating that road?

A. But a short time, I think; less than a year; perhaps not over six months.

Q. Do you know anything about the condition of express matter on the Wabash railroad or the Missouri Pacific at all?

A. I only know that on the roads you speak of the express service was formerly conducted by the United States Express Company, and now it is being operated by the Pacific Express Company, in connection, I think, with the Union Pacific railroad express, and I know of no reason why it is not giving the usual satisfaction, or the same satisfaction the United States Express gave when it was operating the same line.

Q. Is the Pacific Express a railroad express?

A. I think it is.

Q. Mr. Aikin, I will ask you to state how many miles of road you are operating your express over, including the Memphis & Little Rock and St. Louis, Iron Mountain & Southern railroad, from Cairo to Poplar Bluff, how many miles of road are you operating?

(Objected to, as incompetent and irrelevant.)

1002 A. The express department of the St. Louis, Iron Mountain & Southern railroad is operating about 685, or a little less than 700, miles of road; the Memphis & Little Rock, 135 miles of road; the Texas & St. Louit railway, about 128; then the Little Rock & Fort Smith road operates their own express.

A. About how many miles have they?

A. I think 135 miles, and the Hot Springs railroad are operating their own express.

Q. Have you in your mind any other railroads in the United States that are operating their own express department besides those you have named?

A. The Louisville & Nashville, the Ohio & Mississippi, and the Marietta & Cincinnati.

Q. How long has the last-named road been operating its express department?

A. I think it commenced to do its express business at the same time the Baltimore & Ohio and Ohio & Mississippi.

Q. How long is that?

A. I think about six years ago; I think the Delaware, Lackawanna & Western railroad operates its own express from New York city.

Q. Is there any reason, within the whole scope of human knowledge, why the money of the United States Government cannot be transmitted from one part of this country to another as safely, conveniently, and expeditiously by a railroad express department as by any express company that is now doing business in this country?

A. Well, the expresses that have been named here, the Baltimore & Ohio, Louisville & Nashville—I think you said expeditiously, did you?

Q. Yes.

A. The Louisville & Nashville, Memphis & Little Rock, Iron Mountain & Southern (our own department), and the Texas and St.

Louis, they have any arrangement whereby way-bills can be made from any one point in the territory of either to any one point
1003 in the territory of the other, and, with that in operation, there is no reason why money and freight should not be as expeditiously transported from one part of the country to the other as a passenger can go.

(Objected to.)

Witness (continuing): In fact, we are receiving now perishable matter, billed from Baltimore to Little Rock, Texarkana, and Tyler, in Texas, points on the lines of the expresses I have named, billed direct from the shipping point to the destination, and it goes as soon and as quickly as a passenger can make the journey; and arrangements are being perfected, are now perfected, that on and after the first of December way-bills can be made from any point on these lines South that I have mentioned that are operating their express to Philadelphia and New York city, and matter intrusted to either of those railway expresses can reach destination as soon as a train of cars can go there; there is no stoppage for rebilling; no delay occasioned on that account.

Q. Is there any peculiar character about a shipment of Government money over any other money by express?

A. I know of none; we are carrying money from banks on our lines; I don't know as you could denominate it Government money, but it is mutilated currency sent to Government to be redeemed.

Q. You are now transmitting that?

A. Yes, to Washington, and with satisfaction to shippers and with the same facilities that express companies have; ours are inferior to none. There can be no reason why the railway expresses should not transmit this money as safely and expeditiously as express companies transmit it.

Q. Now, Mr. Aikin, suppose a promissory note was delivered to your express department to-day for demand at Dallas, Texas, could that note be carried by your express department and there
1004 presented at the bank with the same expedition, safety, and facility that it could by the express company?

A. We should take that note and deliver it to the Texas Express Company the same as the Southern Express Company does.

Q. So in your case the receiving of a note, if received by the Southern Express Company, there would be no difference?

A. No difference whatever; no, sir.

Q. Suppose you were to receive a note in St. Louis to go into the State of Arkansas for collection, and the place of payment was off the line of your road, would you or not send an agent to the place where the note was to be presented for the purpose of making demand?

A. If it was the shipper's request we should; if it was paper requiring protest we should.

Q. State what greater facility, or what other facility, has the Southern Express Company that you have not, in the presentation of a note, the demand upon which is to be made off the line of your road.

(Objected to.)

A. They have no facilities that we do not enjoy.

Q. How would you in case of a note, in the case I have put, how would you make a demand, the demand having to be made off the line of your road, if it was requested that you were to make it; how would you do it?

A. Our agent would make it in person, or employ the proper person to do it, if he could not give it personal attention.

Q. Then you say there is no reason in your knowledge why the express department of this railroad cannot as well make that demand as the Southern Express Company?

A. I know of none.

1005 Q. The same question I have put to you concerning the note I wish to propound to you concerning any other security or valuable paper, whether there is any facility that is peculiarly within the reach of the Southern Express Company that don't belong to the railway company; I mean whether it can do anything in safely transmitting a valuable paper of any kind that the railroad cannot transmit?

A. I don't know of anything connected with the express business or with its proper transactions in any way that can be done by the Southern Express Company, or any other express company, that we cannot do in the territory we operate.

Q. Did you come to St. Louis at the organization of this express department, or after its organization?

A. I came here shortly before its organization.

Q. And stepped into the department as it was organized, did you?

A. Yes, sir.

Q. Do you know the course of dealing in a general way between the Southern Express Company and the Iron Mountain railroad since you have been here?

A. You mean——

Q. At the depot and all around; I wish to get at the way you have treated them.

A. Yes, sir.

Q. I will get you to state what facilities have not been offered by the Iron Mountain Railroad Company to the Southern Express Company in the transaction of its busines, as far as you know, as to rates of charges and conveniencies of every sort that you had yourself, that you did not extend to them when they applied for it?

A. I don't know of any facility for doing business that they have been denied.

Q. State, if you know, any impediment at all on the part of this company to their doing business.

A. None.

Q. You would know it, would you not, most likely, being at the head of the department?

A. I should; yes.

1006 Q. I would now get you to speak, if you please, on the subject of the manner of all the express companies doing business in reference to packages, whether it is the custom of express companies to charge so much for a package, or to put a great many packages into one bundle and make a bundle of packages and charge the shipper much less for the bundle of packages than they would for a single package; whether or not it is the custom of express companies to charge the shipper for the package shipped by him so much?

(Objected to, as incompetent and irrelevant.)

A. Yes, sir.

Q. Now, if I understand you, to illustrate: If I bring a package of two pounds to your express department, or any other express company, they charge me for that package?

A. Yes, sir.

Q. Then if we five gentlemen were each to take a package there, those four coming in would not lessen the charge against me, would it; I would still have to pay the same amount?

(Objected to.)

A. Now, to explain to you clearly: If you should bring a package to the office here you would be charged the rate upon that package. If you four gentlemen should come in there at the same time with each a package, why, I should charge each of you the rate upon that package. If you four gentlemen should put your four packages together in a bundle, and I knew it, I should charge a rate greater than I would upon a single package of the same weight.

(At this point the further taking of this deposition was continued until to-morrow, at 11 o'clock.)

1007 ST. LOUIS, MO., *November* 23, 1880.

Parties met pursuant to adjournment, and the examination of James Aikin was continued as follows:

By Col. THOROUGHMAN: We were last night upon the subject of packages. How would it be with reference to the receipt by an express company of valuable papers going into one package, or would they be kept separate, even though the consignor was one individual? To illustrate what I mean, suppose that a person should bring to an express office—to that of the Southern Express Company, or to the office of your express department—a mortgage, a promissory note, and a bill of exchange, all destined to Little Rock, Arkansas, would they, according to the usages of express companies, go in one envelope and one package and one charge be made for them, or would you put them in separate packages and charge separately for them?

(Objected to, as incompetent and irrelevant.)

A. If a person should bring these packages to send, or to send and collect the proceeds of them; which do you mean?

Q. To send and collect; the deed for recordation, and the note for collection?

A. You ask me the question, did you not, whether we would insist upon their being put in separate packages or one packege.

Q. Yes, sir; would you put them up separately and charge separately for them, or would you put them in one bundle?

A. We should insist upon their being put in separate packages. For instance, if you should bring to our office four notes of twenty-five dollars each, or four drafts of any amount, no matter what, upon different parties in Little Rock, and ask us to collect them, or take them there to deliver, we should insist upon your putting each
one in a separate package; or, if sent to collect, that they
1008 should be sent in separate collection envelopes, and that each
transaction in regard to the notes should be separate and
distinct by itself.

Q. Then you would charge for each one of these as if you were receiving but one?

A. Yes, sir.

Q. State what you know with reference to that being the custom of all express departments?

(Objected to, as incompetent and irrelevant.)

A. I know that it is the custom of the American Express Company to exact that method of procedure.

Q. It is the universal custom, is it not?

A. It is as far as I know. I am not familiar with the minutiæ of other express companies aside from the American Express Company, but I have no reason to think that their practice is different from that of the American Express Company.

Q. And, as far as you know, the method that you have stated is universal?

A. Yes, sir.

Q. I understood you yesterday evening to state that arrangements were made so that you could transmit, by through bills of lading, packages from the end of your line south of New York, Washington, Baltimore, and other places East?

A. Arrangements are made so that we can bill direct from our most remote points south of Washington and Baltimore; we are organizing it; arrangements are now being perfected to send also direct to New York and Philadelphia.

(Objected to.)

Q. Does that facilitate business over giving broken bills of lading, where new bills are to be made out—does it expedite business?

A. In many instances it does.

(Objected to.)

Q. What would be the consequence in shipping, for instance,
1009 from Cincinnati to Texarkana, property over the Ohio &
Mississippi railroad, coming here and then going down over

your road where there was no through bill of lading; would the consequences be delay or not?

A. In many instances it would; it would cause a delay of twelve to twenty-four hours.

Q. What would be the effect upon your business if the packages, say, if fifty or one hundred persons' moneys or other valuables were put in a bundle, and you required to carry it as a bundle at so much per pound?

(Objected to, as incompetent and irrelevant.)

A. It would lessen the revenue.

By Judge **Pike**: On the supposition that the railroad company would be legally liable for the packages that are carried by an express company doing business over its line of road, what would be the effect of putting the packages together in a bundle, instead of carrying them separately?

(Objected to, as incompetent and irrelevant.)

A. If packages and parcels of the character that you mention are brought to us, or to a railroad company, to be shipped as ordinary freight of a similar weight, the railroad company would receive no adequate compensation for the liability they assume in transporting matter of that value.

By Col. **Thoroughman**: You mean that the liability of the railroad company would still remain, notwithstanding they got nothing for carrying a bundle which was composed of such packages?

A. Yes, sir; I do; as I understand the case.

Q. I want you to state one thing a little more fully than you did yesterday evening. I want you to state now what arrangements you have with reference to the perfect transaction of express business of every character intrusted to your department.

A. We lack nothing; we have every facility for the collect-
1010 ing, transmitting, and the safe-keeping of any business of what-
ever name or nature that is intrusted to us, or to our care, that
any express company has.

Q. Dropping this express department out of your mind, what is the course of business where two express companies meet? For instance, where one, say, is doing business from New York to St. Louis, and the other doing business from St. Louis to San Francisco; if a note is given to the express company in New York to be transmitted to San Francisco, what would take place with that note at St. Louis? Would it be given over to the other express company to carry out the contract of the first company receiving it—is that the way they do business?

(Objected to, as incompetent.)

A. It would be transferred to the connecting express company.

By Mr. **Shepley**: Are you asking with reference to the freight department, or the express department?

Col. THOROUGHMAN: The express department; not the freight department.

WITNESS: To answer that fully, I might perhaps state what course of procedure has been adopted with matter from New York destined to points along the Iron Mountain railroad; it has always been rebilled at St. Louis. For instance, if the American, the United States, or Adams Express Companies receive in New York, or elsewhere in that locality, a package destined to Poplar Bluffs, or any point along the line of the Iron Mountain railroad, coming by way of St. Louis, it is rebilled at St. Louis, transferred from one company to the other, and, as I have been informed by the superintendent of the Texas Express Company—

(Objected to, as hearsay.)

As I have been informed by him, matter from the Iron Mountain
road, destined to points in Texas, or from points north of the
1011 Iron Mountain road, going over that route into Texas, is again
rebilled at Texarkana.

Q. What I want to get at particularly is this: Suppose a promissory note starts as in your example from New York in the hands of the Adams Express Company we will say, and is to go to a man in Little Rock, Arkansas; now, what I mean to inquire of you is, does the Adams Express Company send this on to Little Rock to collect that money there, or do they commit it to the connecting express line and let them collect it?

A. As I have been informed by officers of the Adams Express Company, they transfer it to the Southern Express Company to complete the transaction.

Q. And to complete whatever is to be done about that piece of paper?

A. Whatever is to be done in Little Rock is intrusted to the Southern Express Company.

(Objected to, as hearsay.)

Q. You have been in the express business about eighteen years?

A. Yes, sir.

Q. You understand, perhaps, as fully as any man in the country, the management and operation of express companies, do you not?

A. I can't say that I know as well as any man in the country about it, but I am familiar with the operation of the express service.

Q. Now, there is one other subject that we will call your attention to, and it is a very important one in the phase of affairs. Do you know what is called accessorial service as applied to express companies and railroad companies?

A. I do.

Q. Tell us where you first became acquainted with the express business.

A. In New York State.

Q. Accessorial service, if I understand it, properly speak-
1012 ing, is that service that the carrier performs in gathering up
packages to be by it transported, carried on to its destination,

and then delivered up to the person entitled to the receipt of it; is that it?

A. I so understand it.

Q. State what, if anything, has ever been charged anywhere in the United States by any express company for any such service.

(Objected to, as incompetent and irrelevant.)

A. I understand that they make no charge for accessorial service.

Q. Is not this gathering up of packages and having them convenient for handling, to make up express matter, done by the express companies as a means of advertising as well as a means of convenience to themselves, and without charge?

(Objected to, as leading, incompetent, and irrelevant.)

A. It is done as a matter of convenience, as much as anything.

Q. How is it a convenience?

A. Well, it is less work, less trouble, to take a car-load of freight and packages to the consignees within a suitable reach of the depot or office, than it is to take this matter to an office, put it in store, have people call for it after it has been in the hands of an express company, as they naturally would; having the clerical work that would be necessary in order to conduct the business in that manner by having people call at the office; and the liability as warehousemen, while having the goods in charge—all these things would be a greater expenditure to the express company, coupled with the inconvenience of that free-of-charge method of doing the business, than to deliver the goods with this accessorial service that you have referred to.

Q. Deliver it absolutely free of charge?

A. Yes, sir; and we make no difference in charge with any consignee or with any shipper, whether we call at his door for
1013 the goods, or deliver goods at his door, or whether he brings
the matter to the company's office for shipment, or receives it at the office for delivery.

Q. To illustrate right in our own city, suppose William Barr & Co. send in their own wagon to your express office a package, and another package is sent for by you from Scruggs, Vandervoort & Barney, of the identical same weight. In the one case, Barr sends the package to your office, and in the other, you send for the package and bring it to your office; now, after having transported these respective packages, which we will suppose are of the same weight and same value, what difference, if any, in the charge do you make?

A. We make no difference.

Q. The compensation that an express company receives for this gratuitous service is the relief which they find in the storage and the responsibility of keeping the goods, and the irregularity of people calling for their packages, is it not?

(Objected to, as leading.)

A. It is, as I understand it.

Q. State if there has ever been, within your eighteen years of experience, any charge made for going and getting a package, or for delivering a package after it reached its destination, by any express company in this country.

(Objected to, as leading, incompetent, and irrelevant.)

A. I know of none.

Q. Tell us what the universal custom is with reference to this subject-matter that you and I have under consideration, with reference to any express companies with which you are acquainted gathering up these packages and delivering them, whether the universal custom is that they do not charge for it.

(Objected to, as leading.)

A. They do not charge for it.

1014 Q. What is the universal custom?

A. To do it without charge. That is the practice and the invariable custom, as far as I know.

Q. Everywhere; both in New York and here?

A. Yes, sir; to illustrate that in the State of New York, in many if not all of their cities, people carrying goods for pay, delivering goods about town, have to pay a license for the privilege of doing it. The American Express Company, in the city where I lived, for instance, always avoided paying this license by showing that they charged nothing for that service.

Q. It was a gratuity?

A. It was a gratuity; they charged nothing for the service, and therefore did not pay the license that people carrying goods for pay were obliged to.

(Objected to, as leading, incompetent, and irrelevant.)

Q. What is the fact with reference to that same state of things in this city; do you pay any license in your department for carrying goods around the city here—these free packages?

A. We pay a wagon license here in this city. I presume that every owner of a wagon pays the same license, but we pay nothing for cartage.

Cross-examination by Mr. Shepley:

Q. Mr. Aikin, when did you first come to this city to reside here?

A. I think it was in April.

Q. Can you fix the date?

A. I cannot tell you the precise date.

Q. From what place did you come?

A. Rome, New York.

Q. How did you happen to come here; at whose solicitation?

A. I think I came here at the solicitation of Mr. R. C. Kerens, but I am not definite whether the immediate cause of my coming 1015 here was the request of Mr. Kerens or Mr. Soper. I cannot tell you positively now, but I can by referring to papers which I have.

Q. Was it the early or the latter part of April that you came here?

A. My impression is that it was about the 10th or 12th of April.

Q. What did you come here to do?

A. To explain that, at two or three times during the past three or four years, Mr. Soper has talked with me in regard to this railroad doing its own express business. I have been acquainted with him for some years. He has expressed to me a dissatisfaction in regard to the matter of the express business as it was conducted over the line of the road, and in regard to the revenue that the road derived from it; and at different times has talked with me in regard to roads doing their own express business, and I came here with reference to organizing the express business on a basis different from what had been done theretofore.

Q. Who were doing an express business over the St. Louis, Iron Mountain & Southern railway when you came here?

A. The Southern Express Company.

Q. Did you have any conversation when you first came here in the month of April with Mr. Thomas Allen, in regard to this matter of establishing an express company?

A. I had no conversation with Mr. Allen.

Q. With Mr. Soper?

A. I did; yes, sir.

Q. Do you recollect how early?

A. Soon after my coming here, and several times before my coming here, as I said before.

Q. Was anything said when you first came here between you and
Mr. Soper about any notice to be given by the St. Louis, Iron
1016 Mountain & Southern Railway Company to the Southern
Express Company in relation to terminating this contract?

(Objected to, as immaterial and irrelevant.)

A. I have no recollection of anything.

Q. Was not the object in getting you to come here to take charge of what was known as the Mississippi Valley Express Company?

(Objected to, as irrelevant and incompetent.)

A. If it would suit you as well for me to tell you what I know about that in a narrative form, I will. I want to conform to your request as near as I can, though I do not want to volunteer. As I have before said, there was a dissatisfaction expressed in regard to the revenue received from the express service, and the object sought was to increase the revenue from that source. I would say here that this is as I understood the matter at that time. There was talk of organizing another express company to occupy this road, and, as I said before, there was talk of the railroad doing its own express business, as they are doing now.

By Col. THOROUGHMAN: And as it had done before?

WITNESS: I was informed that the railroad had chosen to do its own business, and my recollection of the facts and circumstances is that I was employed for the purpose of organizing the business for the railroad. I know there was talk at that time of organizing an express company to operate here.

By Mr. **Shepley**: Independent of the railroad?

A. Independent of the railroad; but I am told that project never was perfected.

Q. Thinking over it, is it not the fact that when you first came here in the early part of April you were brought here for the purpose of taking charge of a separate and independent express company, to run on the St. Louis, Iron Mountain & Southern Railway Company separate and apart from the railroad?

(Objected to, as irrelevant and immaterial.)

1017 A. As I have said before, I can't say positively that I was brought here for that purpose, and I cannot say positively that I was not. I do not know that any separate express company was ever organized. I know that there was thought of organizing it, and it was talked of, and it was intended to be called "The Mississippi Valley Express Company;" and I would further state that I was directed to get up stationery headed the "Mississippi Valley Express Company," and did get up some, and was then told to stop.

By Col. **Thoroughman**: By whom were you told this; by any one having charge of the company?

A. I think it was Mr. Kerens.

By Mr. **Shepley**: Do you know anything about the transmission by the Southern Express Company to the St. Louis, Iron Mountain & Southern railway, and the answer by the St. Louis, Iron Mountain & Southern railway to the Southern Express Company of the following letters:

Southern Express Company (Express Forwarders),
Office of the General Superintendent,
Savannah, *April* 1, 1880.

A. W. Soper,
General Superintendant St. Louis, Iron Mountain & Southern R. R., St. Louis Mo:

Dear Sir: Yours of the 26th ult., directed to Memphis, Tennessee, reached me here this morning, and I must confess that in view of the pleasant business relations which have existed between our respective companies for several years, I am surprised at the notice proposing to terminate the same.

I will thank you to inform me what other arrangements have been made, which, in the judgment of your company, rendered dissolution with ours necessary, and would also ask whether the same terms and privileges which may be accorded to others cannot be extended to this company, so as to permit the continuation of its business on your lines.

1018 I expect to be in Nashville on or about the 5th instant, and will be gratified to have your reply directed to that point.

Reciprocating the personal regard which you are pleased to express, I am, respectfully,

M. J. O'BRIEN,
General Superintendent.

ST. LOUIS, *April 5*, 1880.

M. J. O'BRIEN, *General Superintendant Southern Express Company:*

Your letter just received. The contract has been made with other parties, exclusively, same as your own was.

A. W. SOPER,
General Superintendent.

Q. Do you know anything of these letters being received and sent?

A. I do not; I never saw nor heard any talk of the correspondence between the Southern Express Company and this railroad company that took place at that time; I knew nothing of it.

Q. Can you tell me at what time it was that you had the direction from Mr. Kerens to stop printing these circulars?

A. I could not; I could by reference, perhaps; by going to the Globe-Democrat printing company, but I could only do it by referring to their books there.

Q. Could you not by referring to the books of the express department?

A. No, sir; I could not.

Q. The only way that that information can be obtained, then, is by the accounts of the Globe Printing Company?

A. That is the only way I think of at present.

Q. Did you have anything to do with settling up the accounts of the Mississippi Valley Express Company?

1019 A. I did not know that they had any accounts.

Q. Who paid for the printing of those circulars?

(Objected to, as immaterial.)

A. You mean the stationery, I suppose, belonging to the business instead of circulars?

Q. I mean the bill-heads, way-bills, etc., who paid for those?

A. As far as my knowledge goes they were all paid for by the Iron Mountain railroad. There have been no expenditures connected with that department that I know of (and I would be likely to know of all expenditures) that have not passed through the same channel with the other expenditures through the auditor, Mr. Wallace.

Q. Was any reason given to you by Mr. Kerens or anybody else connected with the railroad why those matters which were in train for the purpose of doing the business of the Mississippi Valley Express Company should be stopped?

(Objected to, as immaterial and incompetent.)

A. I cannot call to mind now, but I can say with frankness what I suppose was the reason.

By Col. THOROUGHMAN: Do not state what you suppose.

Mr. SHEPLEY: State what was said to you.

A. I have no recollection that Mr. Soper or Mr. W. R. Allen or

Mr. Kerens said to me why this was done, although they might have done so. As I said before, I am free to state what I suppose was the reason; I have no recollection that they said anything to me.

Q. Do you think that this was before the 4th day of May that these orders were countermanded in reference to the bill-heads and way-bills, etc?

A. I could not tell you the time. The only way in which I could ascertain that would be by going down to the Democrat office and seeing what I could learn there.

1020 Q. Would there be in the express department of the Iron Mountain railroad any receipted bills for that printing.

A. On reflection I do not know that I have any information concerning the time when those bills were paid. I never paid any of those bills, and paid no attention to it.

Q. From the time that this express department was organized you have been cognizant of all the matters that have taken place connected with the express business, have you not?

A. The detail of the business on the line?

Q. No, sir; right here in the office. I do not mean the business, but I am speaking in relation to its organization and what has been done; you are the general manager here?

A. I am the manager as far as the detail of the business is concerned. I do not know what these gentlemen resolve to do in their councils, only as I am told to do this or do that.

Q. But what goes on here you know as a fact and not by consultation; the details of the business and the way it is managed are under your direction, are they not?

A. Yes, sir; I am familiar with that.

Q. Was there any tariff of express rates declared and set up by the St. Louis, Iron Mountain & Southern Railway Company; and, if so, at what time?

A. I made that tariff during the month of May last.

Q. Have you that tariff or can you produce a copy of it?

A. I haven't it here, but in the main the tariff has been changed but little since then.

Q. Can you produce and annex a copy of the tariff as originally issued.

A. Yes, sir; I think I can.

1021 Q. For express rates on the St. Louis, Iron Mountain & Southern railway?

A. Yes, sir; I think I can. I think I have some old copies.

Q. After it was first issued and promulgated, was it changed; and, if so, how soon after it was first issued and promulgated?

A. It was in force about a month, and then some slight modifications were made.

Q. Can you state, either in your answer or by reference to the original tariff, what those modifications were that took place in about a month?

A. I think I can.

Q. I ask you to do so, and produce them at the close of the cross-examination.

A. I will endeavor to get a copy of the original tariff, and a copy after it was changed, and a copy that is in force now.

Q. At what time, if at all, down to the present time was that tariff changed after the slight modification which took place about a month after it was first promulgated; about when is the next change?

A. I will state my impressions. I think from the commencement of operations here, until the present time, we have on different articles that we have been called upon to transport, reduced the tariff, as I thought we were justified in doing from the nature of the case.

Q. I want to know what modifications of the tariff were from time to time made, and at what time they were made; you have already stated as to one modification, a slight one that you say took place about a month after it was first promulgated. Now, I want to know if there was afterwards any modification of the tariff; and, if so, about when that second or subsequent modification of the tariff took place. Was it at any time in connection with the modification of the injunction order made by the circuit court of the 1022 United States for the district of Missouri, in the case of the Southern Express Company against Thomas Allen and others?

A. If it would suit you as well, I will give you this. You have reference undoubtely to a tariff which we have in force on sacks, valuable packages, and safes, have you not?

Q. I may have.

A. If you have, I will tell you what led me to make that tariff.

Q. No; I want the tariff itself—about the time you made the change?

A. I have copies of it, but I cannot tell you the date; I think, however, that it was after the time of the issuance of the modified order of Judge Treat. Do you want me to speak of the circumstances that led me to adopt that tariff?

Q. I will come to that in one moment. You were aware, were you not, of the order having been modified by Judge Treat—the modification of the order as made by the circuit court of the United States for the eastern district of Missouri, at the time it was made?

A. I was away at the time the order was made; I was out of the city.

Q. But you heard of it after you came back?

A. Yes, sir; I did.

Q. Will you produce and file here the tariff as modified and now existing, and annex it to your deposition?

A. Yes, sir.

Q. In that tariff did you undertake to make a tariff which should be a tariff for separate packages alone, and that no valuable packages should be allowed to be received on board of trains of the St. Louis, Iron Mountain & Southern Railway Company unless that tariff was paid upon the separate packages?

A. Perhaps, if it would do as well, I can give you a statement of the circumstances that led me to adopt that tariff, and why I adopted it.

1023 Q. I don't want it now exactly in that way. I want to know simply in point of fact whether that tariff as made was a tariff that was designed to exclude the Southern Express Company from undertaking to put into one package separate parcels, and to have that package sent over the St. Louis, Iron Mountain & Southern Railway Company in the hands of the express messenger of the Southern Express Company as one package.

A. It was not. With reference to the class of business that you refer to, I conferred with Superintendent Morsman, of the Pacific Express.

(Objected to by counsel for plaintiff.)

Q. Did you make that tariff which you made after the order of the United States circuit court for the eastern district of Missouri was made, modifying the original injunction in that suit, for the purpose of getting around the modified order of injunction in that case?

A. I did not. You mean, I suppose, if I did it for the purpose of evading that order?

Q. Yes.

A. I did not.

Q. Why did you do it then; what reason prompted you to make the change in the tariff after that modified order was made?

A. It is unusual to have matter offered in that shape for transmission, and in order that the railroad might receive pay in proportion to the liability which it assumed I conferred with counsel in regard to that; they said that the railroad company were liable for these packages, and in order that the railroad might secure as remuneration proportionate to the liability assumed I issued that tariff.

Q. Therefore it proceeded upon the assumption that the railroad company were liable other than for negligence for the safe-keeping and safety of packages in the hands of the messenger of the Southern Express Company?

1024 A. I was advised by counsel that the railroad company were liable as common carriers for packages in sacks as well as outside of sacks, and for safes containing money, and I issued this tariff that they might receive a remuneration proper and proportionate to the risk assumed in transporting it.

Q. Were you aware that the modified order of the circuit court of the United States for this district, in the case referred to, contained the following: "It is further ordered that the defendant be enjoined from preventing the transportation of express matter by the plaintiff over defendant's road, or from requiring, as a prerequisite or condition for such transportation the listing or disclosure by the plaintiff of the packages by the plaintiff presented for transportation."

A. I don't know that I had read the order, and I don't know that I knew that; I may have read it, but I cannot say; the import of that, however, I presume I was aware of.

Q. You have spoken of the facilities of the express department of the St. Louis, Iron Mountain & Southern Railway Company in the matter of collecting bills of exchange and promissory notes on distant points; to how great an extent does the express department of that road take bills and notes for collection beyond the line of their road, and outside of the line of their road upon either side?

A. I think you will find in my statement, which I made a little while ago, "points on its line."

Q. At any rate, you mean to say so?

A. That was my intention to say, "points on its line."

Q. Then do you undertake as a part of the express department of the St. Louis, Iron Mountain & Southern Railway Company to collect bills and notes beyond the line of its road?

A. We do; and transfer them to connecting express companies at the terminus of our line, letting the same instructions go forward that we have received.

1025 Q. Do you undertake in that express department to collect bills and notes on either side of the said railroad; and, if so, to what extent?

A. On either side, do you mean in the country, along the line of the railroad?

Q. Yes.

A. I do not call to mind any instance where we have undertaken it, but we should do it if offered, subject to whatever instructions shippers should give at the time it was placed in our hands.

Q. How would you proceed to collect it; suppose that there were notes and bills put into the hands of the express department of that railroad to collect, in a city forty or fifty miles on one side or the other of that railroad?

A. That would depend somewhat upon the instructions which the shipper gave when he placed it in our hands.

Q. I mean what agencies would you employ to do that business?

A. That, as said before, would depend somewhat upon the instructions which the shipper gave when he placed the matter for collection in our hands. If he wanted it to go to our office nearest the residence of the party from whom it was due, and should say to us, "Send it there, and have your agent notify by mail," we should do so. If he should say, "Take it to your agent there, and have him go, or employ a messenger to present him," we should do so. If he should say, "In case the man does not respond, place it in the hands of an attorney for collection," if he would guarantee the expenses incurred, we should do so; and that would depend a great deal upon the instructians which the shipper gave. Now, many times a shipper would have a note that would be a good one; he would want to realize on it, and rather than incur the expense of sending a special messenger, he would say, "Wait four or five days and write the man," and the precise line of procedure might be varied five
1026 times, in five different instances, by five different kinds of instructions, from five different shippers.

Q. Suppose that a note was given to you to collect at Cape Girardeau, what would you do with it?

A. We should send it to our office nearest Cape Girardeau. If it was a note requiring protest, we should employ a man, a notary public I think the officer is termed, to present that note and keep within the requirements of the law, and if it was indorsed, to hold the indorsers; we should depend upon the nature of the note and upon its construction; to a great extent our action in the matter would depend on that.

Q. You would send an agent then from the nearest point on the line of your road over to Cape Girardeau?

A. We might do that; there may be communication between Allenville and Cape Girardeau; I think there is. We might intrust it to some other party there to present. We are daily receiving drafts and notes and bills for collection from different parties here. They are very numerous and different shippers give different instructions in regard to collection. We conform to those instructions as near as we can, and endeavor to in every instance.

Q. That is, you do a general collection business, not only upon the line of your road, but at a distance on either side, as well as at the end of your road, with express companies of connecting roads?

A. We receive negotiable paper and bills and accounts for collection, going into the territory of other expresses aside from our own—into territory where we have no agent in the precise locality where the maker may be located, but we take it to a point where we can reach him easiest with the least inconvenience, and the least expense to the party sending it.

Q. And you receive this negotiable paper and bills and accounts for collection on either side of your road, outside of the line of your road, at distances from it?

1027 A. Yes, sir; we do; I mean by that, within ordinarily accessible limits. I do not mean that we would take paper that belonged with some other express—the Pacific Express for instance—that was covered by the express going upon any other road, unless it passed over our road to get to the other roads.

Q. Have you prepared, and will you annex to your deposition, the different tariffs that, since the organization of the express department of the St. Louis, Iron Mountain & Southern railroad, have been put forth by that railroad from the time of its organization down to the present time?

A. I will say in reference to this, that during the fruit season we made a special rate on fruit that does not appear on that; but it was only for a short time; and with such exceptions as that, I have the tariffs which you inquire for, and will hand them to the notary to be filed with this deposition as Exhibit A. If I think of anything else, or if you do, that I can attach to that, I will be very willing to do it at any time.

Q. Will you explain what the paper which is the first one forming a part of this exhibit, and is characterized as "Base for tariff adopted," means?

A. This is the basis upon which the tariff of the same date was made, although it may not comply with it exactly in every instance, but it approximates; for instance, there might be a place where it is twenty-six miles, that we would not jump up the increase, that would be indicated by the tariff of which No. 1 forms the basis.

Q. Will you state what paper No. 2 is, when it went into operation, and for how long it continued?

A. It is what it purports to be, a money and freight tariff from St. Louis, Missouri, to points named thereon, put out by the express department of the St. Louis, Iron Mountain & Southern railway. It went into use June 1st, and continued in use through the
1028 month of June, and for points on the Iron Mountain railway is framed upon the basis named in paper No. 1.

Q. Will you state what paper No. 3 in this exhibit is?

A. It is a classification sheet, indicating the proper charge to make on amounts of currency, gold and silver, less than $1,000, and also the rate to charge on collections and C. O. D.'s, as we term it; also, instructions to a limited extent with reference to making such collections. And it further contains instructions for making the proper charge on packages of freight in quantities less than one hundred pounds, together with the directions about transacting the business, and naming different classes of freight and the proper charges to make thereon; for instance, live hogs, and corpses and live poultry, different kinds of live freight and oil paintings, plate glass, showcases, etc. To explain this: The tariff from here to Little Rock when this was issued was two dollars per hundred pounds; the two dollars is at the head of the column which you want to consult; going to the margin at the left of that column, you there find described the weight of the package you wish to send; from the weight of that package trace to the right to the figures under two dollars to the column headed two dollars; there you will see the proper charge to make on that package. The same method holds good in determining the tariff on small remittances; for instance, the tariff to Little Rock on money is one dollar and a half per thousand; consult the column headed $1.50 to the left in the margin, you will find described the amount of the package you may desire to send; from that description trace to the right to the column headed $1.50, and you will find the proper charge to make upon that package.

Q. This continued as long as the tariff continued?

A. Yes, sir; paper No. 3 was in use for the same length of time as paper No. 2.

1029 Q. State what paper No. 4 is.

A. It is a basis for tariff for the same purpose as No. 1, but slightly different in its details.

(At this point the further taking of these depositions was continued until Friday, November 26, 1880.)

ST. LOUIS, MO., FRIDAY, *November*, 26, 1880.

Parties met pursuant to adjournment, and, by consent, adjourned until Saturday, November 27, at 2 p. m.

SATURDAY, 2 P. M., *November* 27, 1880.

Parties met pursuant to adjournment, and, by consent, adjourned until Monday, November 29, 1880, at 10 a. m.

MONDAY, *November* 29, 1880.

Parties met pursuant to adjournment, and the cross-examination of Mr. Aikin was resumed as follows:

By Mr. SHEPLEY: When did this basis for tariff in paper No. 4, go into effect?

A. In August, with the exception of the entry under date of November 22, which was added at that date.

Q. Did the paper No. 4, going into effect in August, form the basis of a new tariff?

A. It did slightly differ from the tariff used previous to that time.

Q. Is that the tariff appearing here upon paper No. 5?

A. Not precisely.

Q. Then please state when, and under what basis the tariff on that paper, No. 5, was made up from?

A. That basis is not here, nor can I find it; I have examined through the auditor's office for it and I cannot find it.

Q. At what time did this tariff in the paper No. 5 go into effect?

A. In August; I can't tell the exact date.

1030 Q. What is the paper No. 6?

A. Classification sheet of tariff, which belongs to tariff in paper No. 5; it gives the tariff on packages of less than 100 pounds, or sums of money in amounts less than $1,000.

Q. It went into effect at the same time that the paper in tariff No. 5, went into effect.

A. Yes, sir.

Q. What is paper No. 7?

A. It is what it purports to be on its face, a tariff on kegs and boxes, all kinds of sacks, boxes, and chests and valuable packages, and safes containing valuables and money.

Q. It is, then, a circular directed to your agents?

A. Yes.

Q. What time was that sent out, the circular of which paper 7 is a copy?

A. November 11, 1880.

Q. Was it in fact sent out at the time it bears date?

A. I think it was; this might have been written the evening of November 11th, and sent out in the morning.

Q. They were within a day or so of its date?

A. Within a few hours, yes.

Q. What is paper No. 8; what does that represent?

A. That is a tariff sheet.

Q. When did that take effect?

A. November 22, 1880; there might be an instance where it would not get into the hands of agents till the following day perhaps.

Q. Then this tariff only went into effect from the 22d instant?

A. Yes, sir.

Q. How did you come to issue the circular, a copy of which is contained in paper No. 7?

A. What were the circumstances that induced me to?

Q. Yes; was anything said to you by anybody in relation to this matter; if so, whom?

1031 A. No; I had talked of issuing that circular some months ago; I had talked with Mr. Morsman, superintendent of the Pacific Express, also with Mr. Fuller; in September I think, I had a talk with the counsel here in regard to it.

Q. You mean counsel for the St. Louis, Iron Mountain & Southern Railway Company?

A. Yes; Messrs. Thoroughman & Pike; but it was issued after conferring with those gentlemen, and we submitted to the express men, Messrs. Morsman and Fuller, the points affected, and they thought it was a proper and just tariff.

Q. Why did you submit it to Messrs. Morsman and Fuller; what sort of connection have they with this suit, or with the St. Louis, Iron Mountain & Southern Railway Company?

A. I don't know that they have any connection with this, but they are old express men, and sometimes questions arise that I like their advice upon, as I would any other express men of experience.

Q. How long after the modified order of the circuit court was this circular of November 11, contained in paper 7, issued?

A. I cannot give you the date of that modified order, but I think very soon thereafter.

Q. Was anything said to you by counsel of the St. Louis, Iron Mountain & Southern Railway Company in reference to the propriety of issuing such a circular?

A. At what time do you mean?

Q. A little before the circular was issued, and after the modified order was made.

A. Well, I know that I have talked with them about that tariff before, a month and a half—I presume two months previous to the present month, but I don't know that they advised me to issue that tariff immediately preceding this being issued; I would not say they did; I can't say positively in regard to that.

1032 Q. What is your best recollection in regard to that matter, whether it was not the result of a conference between you and the counsel of the railway company?

A. My best recollection is, that is, judging from my action in regard to those matters before that, that I did ask the counsel if I could with propriety issue a tariff of that kind, but I don't recollect now the precise time that I last conversed with them about it.

Q. Let me refresh your memory, Mr. Aikin, did you not before you issued it show it to Mr. Fisher, and had you intended to show it if your counsel approved it?

A. I rather think I had something very similar to that paper, which was not the precise shape.

Q. But the general effect of it was the same?

A. Yes, the general effect of it.

Q. There might have been some change in the phraseology?

A. Yes, I think I do remember now that conversation with Mr. Fisher.

Q. What prompted the issue of the tariff which is contained in paper No. 8, dated November 22?

A. The low freight rates on merchandise from here to Texas and points down upon the road being lower than heretofore, I thought it proper to make the express rates to those points a little lower than they had been theretofore.

Q. Was the sole change in the tariff thus contained in paper No. 8, to lower the tariff rates for express matter?

A. That is the only reason; I have stated the sole and only reason for making that change of rates; perhaps I ought to qualify that a little; some points named in that tariff this side of Texarkana, the rate was the same as to Texarkana, and decreasing the through rate I would naturally decrease the rate proportionately to those points; I would not want to make the tariff to Texarkana less than it was fifty miles this side of there, unless some extraordinary reason should exist for it.

1033 Q. The change which was made by tariff which appears in paper 8 seems to be almost exclusively, I believe exclusively, except in one instance, in rates on freight?

A. Yes, sir.

Q. Not in rates on currency?

A. Yes, sir.

Q. What prompted you in the circular, a copy of which is found in paper number 7, to change the rates on sacks, boxes, and chests of packages charged three times the merchandise rates?

A. It was to get what I regarded, and was advised, was a suitable and proper tariff to charge on that class of shipments.

Q. What induced you to change the tariff by that circular on safes or treasure boxes containing currency, coin, or valuables charged six times merchandise rates?

A. We never had had a tariff upon that; we never had issued a tariff on that class of shipment, and what led me—the one thing that led me to issue that tariff—in a conversation once with Mr. Morsman, of the Pacific Express, the fact was mentioned, I think it was in my conversation with him, that at certain seasons of the year the American Express Company, who operated a boat line between Detroit and Cleveland, were forced to use the line of the United States Express, from Detroit to Cleveland, to transport their business, on account of their line from Detroit to Cleveland being a boat line and the winter season closed the lake with ice; it was either Mr. Morsman or Mr. Fuller, or a gentleman that was then route agent for the United States Express Company, when we were talking of the propriety of issuing such a tariff, told me that when the lake froze up the American Express Company were obliged to ship every class of packages, chests, and valuables by the United States Express, and the United States Express made the American Express give the value of the contents of those sacks, safes, and made the tariff proportionate to the value of the matter carried in them.

1034 Q. You say you were advised to make this in this way; who were the persons who advised you?

A. Perhaps you use the word advice in a different sense from what

I intended you should; I do not know that it was suggested to me by any one to make that tariff; my impression is that was a suggestion of my own.

Q. What time before this circular contained in paper No. 7 was issued did you have this conversation with Mr. Morsman and Fuller in regard to this?

A. I think I talked with them in September or October; I talked to them different times about it.

Q. Did you ever converse with them just prior to the issuing of this circular?

A. No, sir; I did not see Mr. Morsman, nor I don't think I talked with Mr. Fuller about it during the present month previous to its being issued; I think I once talked to Mr. Albright about it, about a couple of months ago or more.

Q. Then, this is the first time, according to your statement, that any tariff had been made upon the class of articles transported on your road?

A. It is the first time I had made any tariff, yes, to apply to that class of shipments.

Q. I mean express tariffs for such express matter?

A. Yes; it is.

Q. When you made this tariff you were aware that, by the modified order, the St. Louis, Iron Mountain & Southern Railroad Company were "enjoined from preventing transportation of express matter by plaintiff over the defendant's road, and from requiring as a prerequisite or condition for said transportation the listing or disclosure by the plaintiff of the contents of the packages by the plaintiff presented to the defendant for transportation," were you not?

A. I had read what purported to be a copy of Judge Treat's order.

1035 Q. Well, wasn't this circular issued for the purpose of accomplishing in another way what you were prohibited from doing directly by the terms of the order?

A. I should have issued the tariff if the order had not been granted; but in issuing it I had no disposition nor desire to in any way do anything to conflict with the judge's order.

Q. Was it not the fact that there had been constant difficulties and differences between the agents of the St. Louis, Iron Mountain & Southern Railroad Company, and the agents of the Southern Express Company, in relation to the shipment of boxes by the Southern Express Company, which the agents of the St. Louis, Iron Mountain & Southern Railroad Company insisted contained separate valuable packages?

A. Well, I can't say that there had been constant difficulties and differences, but I know there had been differences of opinion in regard to the shipment of the class of matter——

Q. Was it not to reach that class of matter, and to charge upon that class of matter the same tariff that the St. Louis, Iron Mountain & Southern Railroad Company insisted they had a right to charge upon them as separate packages, that this tariff was made—this tariff contained in circular paper No. 7?

A. In answer to that I don't know that I can say anything different from what I have just repeated, that the object in issuing that tariff was to get a proportionate and proper remuneration for the matter carried. It was not issued with any spite towards the organization over which my friend exercises control or to spite anybody.

Q. If sacks, boxes, and chests are shipped by Dodd, Brown & Co., or by Samuel C. Davis & Co., nailed up, do you claim the right either to open and examine those boxes and chests for the purpose of ascertaining whether they contain separate packages or not, or do you claim the right either to say to them that they must give to you a statement of what they contain or that you will reject those packages?

1036 A. I suppose that as a common carrier we have a right.

Q. I do not ask what you suppose, I ask what you do; that is the question.

A. Any shipper that brings freight for shipment under circumstances that leave us to think it contains this class of merchandise or goods that you speak of is liable to be treated according to the terms of that circular tariff, and I should treat it in that same way.

Q. That is not an answer to the question; the question is, whether you claim and exercise the right, when packages are presented—when boxes and chests nailed up are presented—by merchants of this city, to examine or to demand of them what their contents are, and if they should not tell you what those contents are that you have a right to and do reject those boxes and chests so nailed up?

A. I think we have a right to know the contents of every package we ship.

Q. Well, the question is not answered; the question is, what do you do, not what you have a right to do, but what in point of fact do you do in the case which I have presented to you?

A. We don't always ask everybody; we don't demand of any one in all cases the contents of all the matter they forward.

Q. Have you, in any case, except that of the Southern Express Company, ever demanded of shippers over the St. Louis, Iron Mountain & Southern Railroad Company what a box or boxes contained which were given to you for transportation? And, if so, please give the instances.

A. Well, I cannot particularize any instance now of my own knowledge. Our agent at Cairo wrote me that a package was presented to him a few days since to be forwarded to a party at Texarkana under circumstances which (or something connected with it)
led him to believe that it was a bundle made up of small
1037 packages, and he traced it up and ascertained that it did contain packages. I think he told me that he asked the contents, and it was brought to him lately (I will not say whether he demanded it or not); but he said he traced it up with reference to making this demand if any parcels were offered that led him to believe they were of that character again. It is an unusual way of shipping goods.

Q. What is?

A. This shipping of them in packages, and the developments of business develop different rules for the control of business. Any man in the express business fifteen or twenty years has realized the instances where he has been imposed upon. People will bring packages to the office, of merchandise, with money inside. Agents are forbidden to receive money to forward in that way, and as business develops new rules have to be enforced for its government, and that was the occasion of the issuing of this circular. There was a class of business being developed here that I was entirely unused to see going by express in that manner, and that circular was issued to cover those, not only by the Southern Express Company, but anybody that offered it; wherever it was offered under circumstances that led us to believe that method was being followed, why this was to apply; and I have instructed our agents to enforce that circular on whoever offered anything that it would cover. I have reason to believe that it is being practiced now by different shippers, and in every case I can ascertain we apply that tariff.

(All the foregoing answer, from the first sentence, is objected to by counsel for plaintiff, as being part of it hearsay, and part of it not responsive to the question.)

WITNESS: I never have given any order to have this tariff 1038 particularly enforced against the Southern Express Company any more than against any other shipper.

(The last part of the answer is objected to, as incompetent and irrelevant.)

Q. Then, this was made, as I understand you, this circular contained in paper No. 7, after the modified order was made by the circuit court of the United States in this case; that it was made when there had been theretofore no tariff or classification of the articles mentioned in this circular, and was made after the circuit court had enjoined the St. Louis, Iron Mountain & Southern Express Company from requiring as a prerequisite or condition to transportation the listing or disclosure by plaintiff of the contents of packages which the plaintiff presented to defendant for transportation, which modified order was known to you?

A. This circular was issued after I had read the modified order of Judge Treat; in relation to these tariffs, I make the general remark that there may be some slight clerical errors or inaccuracies in details, which I do not want to be understood as saying are strictly accurate; they are substantially correct, and I believe it to be accurate.

Q. Where does the messenger that accompanies that express matter sent out daily on the St. Louis, Iron Mountain & Southern railway stay; where does he ride during the time he is on board the train?

A. In the car with his express matter.

Q. In the passenger car or in the express car?

A. In the express car.

Q. Is he supplied with a seat or does he stand?

A. Well, sir, I can't tell you; if he is supplied with a seat, he furnishes it himself.

Q. Are you certain of that fact that he supplies it himself?

A. I know the express department don't supply them; I have no knowledge who does furnish them if he don't do it.

1039 Q. Do you mean to say the express department is part of the railroad?

A. Yes; they are not furnished by the railroad at all.

Q. Are you certain about that?

A. I am, sir.

Q. Do you keep a separate account of the express department of the St. Louis, Iron Mountain & Southern railroad from the other department?

(Objected to, as irrelevant, and because it is not the best mode of proving the fact.)

A. I do not, perhaps, precisely understand your question.

Q. I will continue it. Do you charge against the express department the cost and expenditure of messengers, expense of horses and wagons, and the cost of keeping the horses and wagons, and of men connected with the express department?

A. I perhaps do not know the precise disposition that is made of this fund; as I understand, all purchases are paid for by the railway company; all moneys are provided to be paid by the treasurer of the railroad; how they designate and keep those accounts—I am not familiar with that.

Q. Do you know whether, as a part of this expenditure, each express messenger, as he accompanies the express matter, is sent upon the train of that railroad by the express department and charged as a part of the expenses of the department?

A. I do not.

Redirect examination by Judge Pike:

Q. You say this tariff issued on the 22d of November was the same as the tariff issued in August, with the exception that it referred to the chests and packages?

A. No, sir.

1040 Q. What is the difference between the tariff that went into effect the 22d of November and the tariff that went into effect in August, in substance?

A. There was a slight reduction on freight destined to Texas and points from Little Rock south.

Q. Any additions made to it?

A. No, sir; none.

Q. I am speaking of the 22d of November.

A. I am.

Q. What are the changes made in No. 7, or the additions; what is contained in what is called No. 7; are there additions or changes?

A. They are not changes. To illustrate, we have different classifications on different classes of freight, as you will see by reference to the classification sheet. For instance, fancy poultry is charged double classification rates; live hogs, once and a half; show-cases, double; looking-glasses, three times the regular rates; there are in that tariff No. 7 additional classification.

Q. I understand you to say there had been no tariff in reference to that class of express matter previous to that time?

A. No, sir.

Q. No classification?

A. No, sir; there was not previous to that time.

Q. Had that matter, previous to that time of issuing of the circular, been carried over the Iron Mountain & Southern railroad; had that character of express matter been ever presented and carried over the Iron Mountain & Southern railway previous to the issuance of that circular?

A. Not to any extent that I know of.

Q. What was the reason, then, of issuing that circular; what was the reason and purpose of doing it?

A. One reason was that we had kegs and boxes offered that we had reason to believe contained coin, and there was nothing upon them to designate what they contained; the original marks had been erased, and it was to get what was regarded as a proper 1041 remuneration for the classes of matter it refers to—a proper remuneration for the risk assumed in transporting it—and for the transportation. It was something unusual, I regarded, in the course of the express business, to offer matter of that kind and character for transportation in that mode, and to meet it this circular tariff was issued.

Q. State if since the modification of the injunction, which you said you have read, whether the rates on express matter have been made higher or lower; whether there has been any increase in the rate and charges, since the modification of the injunction, in the tariff in operation before that?

A. There has been no increase; a decrease to some points; a decrease was made, as before stated, on account of the low freight rates to points in Texas. For instance, our tariff to Texarkana was $2.75; freight rates were reduced so much—most everything would go by freight; I made a reduction in the tariff to retain legitimate express business, and in making a reduction to Texarkana I reduced to points this side of Texarkana, so that we would not charge more for matter going a long distance that we did for the same going a shorter distance. The same with reference to freight going to Little Rock; there was competition and low rate of freight by every train to Little Rock, and the same reasons influenced or induced me to make a less rate to that point.

Q. You stated in your examination-in-chief you had talked to Mr. Fisher, superintendent of the Southern Express Company, in reference to this tariff; what time did you talk with Mr. Fisher?

A. Well, I can't say; I think my talk with Mr. Fisher was between the time of my reading Judge Treat's order and the issuance of this circular of tariff, marked No. 7.

Q. What occurred between you and Mr. Fisher in that conversation?

1042 A. Well, I can't remember; I didn't remember the conversation till he recalled it this morning; it was in my office, and we were talking about various things, I guess; I can't say precisely what the subject of our conversation was now, but I was probably telling him I was about issuing a tariff similar to this paper, marked No. 7, and I think I read him some points in it, if not the whole.

Q. What was said by him, do you recollect?

A. I can't remember; I can't say.

Q. The question has been asked you if there had not been a difference between the agents of the St. Louis, Iron Mountain & Southern Railway Company and that of the Southern Express Company in reference to sending valuables by chests, packages, etc.; what was your answer to that?

A. There have been differences, but I think not constant differences.

Q. That is previous to the modification of the injunction or since?

A. I call to mind one instance now where I understood there was a difference of opinion in regard to the shipment of a box, and on little details of the business sometimes there has been a little bit of disagreement between their representatives and ours about taking account of freight before it goes in the car, its weight, and the like of that.

Q. What differences, if any, have taken place between you and them with reference to sending those packages in chests and safes previous to the modification of the injunction, or since—I mean generally?

A. The only difference that occurs to me is that they thought we had no right to insist upon a knowledge of the contents of their packages; said it was none of our business what their packages contained.

Q. State if you have ever required the listing of their packages since the modification of the injunction?

A. I have not; no, sir.

1043 Q. You say it was only where you had reason to suspect or believe they contained valuables, you required them to pay this tariff rate?

A. That is all, yes; only in such instances.

Q. What were the circumstances which induced you to believe they contained those valuables, and so on, before or after the modification of the injunction, at any time that they were presented to you?

A. Our messengers on the train said that those sacks were opened after being put in the car, and contained matter destined to points beyond the destination named on the sack; for instance, a sack or box would be given us at Cairo to transport to Poplar Bluff; it would be opened upon the train and packages taken therefrom destined to points south of Poplar Bluff, and under that method of procedure the railway company would get paid for transporting it only a portion of the distance carried. In one instance, I now call to mind, our Cairo agent followed, or went on the train with, a sack to Poplar Bluff, and informed me that he there found packages from Cairo that had been taken from a sack or box destined to points down the road, and they had been given him for transportation under representation that Poplar Bluff was the destination, or under cover that it was destined to Poplar Bluff.

(All the foregoing answer was objected to, on the ground that it was entirely irrelevant.)

Q. When they presented sacks, boxes, and chests supposed to contain valuables, what did they say as to their contents, if anything—the agents of the Southern Express Company?

A. It is proper for me to say here, perhaps, that of my own knowledge I never have had presented a sack or box or chest to me personally for transportation, and of my own personal knowledge I cannot give any answer to this question.

Q. You were asked with reference to where the express messenger rode on the car; you stated, I believe, that he rode in the express car with the goods?

1044 A. The railroad's messenger?

Q. Yes, and the express messenger of the Iron Mountain & Southern Express Company?

A. He rides in the car with the goods they offer for transportation.

Q. Do messengers accompany shipments of goods by any other carriers than that of the express department of the Iron Mountain railroad?

A. No other shippers are allowed in the express car, no, sir; nor would not be under any circumstances.

Q. I will ask you to state whether the express department of the Iron Mountain railroad furnish their messengers with chairs or seats?

A. They do not.

Q. I will ask you if you ever knew in your experience in the express business of eighteen years packages to be presented in chests and sacks, as were presented here by the Southern Express Company, with which you are connected?

(Objected to, as incompetent and irrelevant.)

Q. Is it usual to send express matter in the way in which this express matter has been presented to the St. Louis, Iron Mountain & Southern Railway Company for transportation?

(Objected to, as incompetent and irrelevant.)

A. It is not.

Re-examination by Mr. Shepley:

Q. You say that the tariff contained in paper 8 was made on account of the competition to Texarkana and Little Rock, and other points; what competition for express freight to those points has the express department of the St. Louis, Iron Mountain & Southern railroad, except the Southern Express Company?

A. I did not mean to be so understood in my answer; I intended
to say this tariff was reduced on account of the low rates on
1045 freight trains to points named, to Little Rock and Texarkana;
that legitimate express freight was being diverted from the
express carriage by those lower rates, and to retain the business I
made those rates as they are.

Q. With what roads was that competition?

A. I don't know, sir; I don't know the reasons why this low freight existed; I never inquired.

Q. Did I understand you, as far as your individual knowledge went, you knew of an instance in which the rates as fixed and prescribed in the circular, a copy of which is given in paper No. 7, was ever applied?

A. Excepting in the case I referred to, between the American and United States Express Companies.

Q. No; I mean of your own knowledge.

A. I never did; no.

JAS. AIKIN.

1046 ST. LOUIS, *March* 28, 1881.

Parties met pursuant to adjournment.

Present: S. M. Breckinridge and J. R. Shepley, counsel for plaintiff, and Messrs. Thoroughman & Pike and J. O. Broadhead, for defendants.

M. M. CLARK, of lawful age, being produced, sworn, and examined on the part of the defendant, testified as follows:

Direct examination by Mr. THOROUGHMAN:

Q. State your name.

A. M. M. Clark.

Q. Now, state what official relation, if any, you bear to the St. Louis, Iron Mountain & Southern Railway Company, and how long you have been in that position.

A. I am auditor of the express department of the St. Louis, Iron Mountain & Southern railway, and have been since the 15th of September, 1880.

Q. What business had you been engaged in before coming to the office of auditor of the express department of the railway company?

A. Immediately before that I had been in the railroad business.

Q. In what capacity?

A. In the freight department.

Q. How long had you been in the railroad business?

A. Some four years.

Q. In what place?

A. Indianapolis.

Q. I will get you to state now, if you can, from your books and
the books of the St. Louis, Iron Mountain & Southern Railway Company, the earnings of the express department of the St. Louis,
1047 Iron Mountain & Southern Railway Company since the organization of that department.

(Objected to.)

A. Yes; I can.

Q. Can you tell us what relation they bear, or how they compare, with the earnings of the St. Louis, Iron Mountain & Southern Railway Company while it operated under contract with the Southern Express Company; and which sum is the largest, that made by the railroad company before the organization of its own department or since; can you answer those questions?

(Objected to by complainant's counsel.)

A. I cannot without making inquiries in regard to the earnings previous to that time.

Q. You can, by making inquiries, answer the question; you can make a comparison and answer the question?

A. Yes, sir.

Q. How long would it take you to do it?

A. It would have to be done by inquiries from the St. Louis and Iron Mountain officers, to know what their income was previous to that time.

Q. Can you tell shortly what the earning have been monthly since the organization of the express department of the road, independent of the other fact; can you go at once and get that?

A. Yes, sir.

Q. How long would it take you to make a comparison and answer the two questions, and then show the comparison; could you do it by 2 o'clock to-day?

A. I hardly think I could.

Q. Can you by 10 o'clock, or some time to-morrow?

A. Yes, sir.

(At this point, by consent, the further examination was adjourned until April 2d, at 11 o'clock a. m.)

1048 ST. LOUIS, *April 2d*, 1881.

Parties met pursuant to adjournment.

Present: For complainant, S. M. Breckinridge, Esq., and J. R. Shepley, Esq.; for defendant, Messrs. Thoroughman & Pike and J. O. Broadhead, Esq.

The direct examination of M. M. CLARK was resumed as follows:

By Mr. THOROUGHMAN:

State what the earnings of the express department of the St. Louis, Iron Mountain & Southern railway have been, how much a month, since you have been connected with it.

(Objected to by complainant's counsel, as incompetent and irrelevant, partly because these earnings are the result of illegal and excessive charges against the complainant.)

Q. State what they are, if you please.

A. The earnings of the express department have been $59,641.89 from June 1st, 1880, to March 1st, 1881.

Q. I will get you to state where your office is in this city.

A. It is in room 7, Jaccard building, Fifth and Olive.

Q. I will get you to state if you know anything about the business that is conducted by the express department of the St. Louis, Iron Mountain & Southern Railway Company, as to how it is received by the public; state the character of it, as to whether it is a general express business.

A. It is a general express business.

Q. All matters that are usually express matters are sent by the Iron Mountain express department, are they?

A. Yes.

Q. I will get you to state if you know anything about the conduct of the express business by the Iron Mountain Railway Company,
1049 since you have been connected with it, as to the manner in which it has been conducted; of your own knowledge, do you know anything about that?

A. In what regard do you mean?

Q. Whether the conduct of the Iron Mountain Railway Company in running its express department has been in its dealings as fair and proper with the Southern Express Company as it has with other patrons of the road; how it has deported itself to the Southern Express Company; if you know, as to the facilities afforded the Southern Express Company.

A. I suppose they are the same as granted the others.

Q. Do you know, of your own knowledge?

A. I don't know anything about the general management of the company, only its accounts.

Q. State if you are acquainted with any other patrons of the road, of the public that patronize the road, and as to the manner of the railroad company's doing business with other members of the public than the Southern Express Company, or is it true that you don't know anything about the management, except as auditor of the road?

A. I know very little about it, except in a general way, aside from that fact.

Q. Have you any knowledge by which you can speak as to the satisfaction the public has expressed with the conduct of the express business by the railway company?

(Objected to, as incompetent.)

Q. Whether the service rendered to the public by the railway company has been satisfactory; have you any means of knowing that; can you answer it?

A. I suppose them to be popular with the general public.

1050 Q. Is it not a fact that the express business of the Iron Mountain railroad has constantly increased since the organization of the department?

(Objected to, as incompetent, both as to form and substance.)

A. Yes, sir.

Q. Can you tell us how the business of the Iron Mountain Railroad Company compares with that done by the Southern Express Company on the Iron Mountain railroad, as to the amount?

A. Yes; I can.

Q. Can you tell us what relation they bear, or how they compare, with the earnings of the St. Louis, Iron Mountain & Southern Railway Company while it operated under contract with the Southern Express Company; and which sum is the largest, that made by the railroad company before the organization of its own department or since; can you answer those questions?

(Objected to by complainant's counsel.)

A. I cannot without making inquiries in regard to the earnings previous to that time.

Q. You can, by making inquiries, answer the question; you can make a comparison and answer the question?

A. Yes, sir.

Q. How long would it take you to do it?

A. It would have to be done by inquiries from the St. Louis and Iron Mountain officers, to know what their income was previous to that time.

Q. Can you tell shortly what the earning have been monthly since the organization of the express department of the road, independent of the other fact; can you go at once and get that?

A. Yes, sir.

Q. How long would it take you to make a comparison and answer the two questions, and then show the comparison; could you do it by 2 o'clock to-day?

A. I hardly think I could.

Q. Can you by 10 o'clock, or some time to-morrow?

A. Yes, sir.

(At this point, by consent, the further examination was adjourned until April 2d, at 11 o'clock a. m.)

1048 St. Louis, *April 2d*, 1881.

Parties met pursuant to adjournment.

Present: For complainant, S. M. Breckinridge, Esq., and J. R. Shepley, Esq.; for defendant, Messrs. Thoroughman & Pike and J. O. Broadhead, Esq.

The direct examination of M. M. Clark was resumed as follows:

By Mr. Thoroughman:

State what the earnings of the express department of the St. Louis, Iron Mountain & Southern railway have been, how much a month, since you have been connected with it.

(Objected to by complainant's counsel, as incompetent and irrelevant, partly because these earnings are the result of illegal and excessive charges against the complainant.)

Q. State what they are, if you please.

A. The earnings of the express department have been $59,641.89 from June 1st, 1880, to March 1st, 1881.

Q. I will get you to state where your office is in this city.

A. It is in room 7, Jaccard building, Fifth and Olive.

Q. I will get you to state if you know anything about the business that is conducted by the express department of the St. Louis, Iron Mountain & Southern Railway Company, as to how it is received by the public; state the character of it, as to whether it is a general express business.

A. It is a general express business.

Q. All matters that are usually express matters are sent by the Iron Mountain express department, are they?

A. Yes.

Q. I will get you to state if you know anything about the conduct
of the express business by the Iron Mountain Railway Com-
1049 pany, since you have been connected with it, as to the man-
ner in which it has been conducted; of your own knowledge,
do you know anything about that?

A. In what regard do you mean?

Q. Whether the conduct of the Iron Mountain Railway Company in running its express department has been in its dealings as fair and proper with the Southern Express Company as it has with other patrons of the road; how it has deported itself to the Southern Express Company; if you know, as to the facilities afforded the Southern Express Company.

A. I suppose they are the same as granted the others.

Q. Do you know, of your own knowledge?

A. I don't know anything about the general management of the company, only its accounts.

Q. State if you are acquainted with any other patrons of the road, of the public that patronize the road, and as to the manner of the railroad company's doing business with other members of the public than the Southern Express Company, or is it true that you don't know anything about the management, except as auditor of the road?

A. I know very little about it, except in a general way, aside from that fact.

Q. Have you any knowledge by which you can speak as to the satisfaction the public has expressed with the conduct of the express business by the railway company?

(Objected to, as incompetent.)

Q. Whether the service rendered to the public by the railway company has been satisfactory; have you any means of knowing that; can you answer it?

A. I suppose them to be popular with the general public.

1050 Q. Is it not a fact that the express business of the Iron
Mountain railroad has constantly increased since the organization of the department?

(Objected to, as incompetent, both as to form and substance.)

A. Yes, sir.

Q. Can you tell us how the business of the Iron Mountain Railroad Company compares with that done by the Southern Express Company on the Iron Mountain railroad, as to the amount?

A. No, sir.

Q. How do they compare as to volume—that is, the business of the railroad company with that of the Southern Express Company, on your line? Are you possessed of data from which you can answer the question? Do you know enough about the Southern Express business to answer the question?

A. No, sir; I do not know enough about it.

Q. From whence does the Iron Mountain railroad receive its patronage in its express department; does it come from the city and surroundings and other roads, or where does it come from?

A. From all those points—this city and connecting roads.

Q. What is its patronage in this city?

A. They are doing a very good business.

Q. They are doing a good business in the city here?

A. Yes, sir.

Q. Now, how satisfactorily is that business being done to the public here by the railway company?

(Objected to by complainant's counsel, because the witness has already shown he don't know.)

A. I suppose it to be perfectly satisfactory to the public.

1051 Q. You are auditor, and would know of complaints, wouldn't you, that come in, if any there were to come in?

(Objected to by complainant's counsel, as incompetent.)

A. No, sir; they would go to the superintendent, naturally.

Q. That is Mr. James Aikin, isn't it?

A. Yes, sir.

Q. In your business as auditor would you know the articles that are generally carried by the express department of the road so as to classify them, or tell us what they generally are?

A. Yes, sir.

Q. Now, will you tell us that—what sort of patronage—what are the articles given to the railroad company generally to carry; name them fully?

(Objected to.)

A. Boxes and packages of merchandise, money, valuable packages.

Q. Notes and bonds, I suppose, and things of that sort?

A. Yes, sir; and drafts for collection.

Q. In short, isn't it true that all such things, bonds, bills, notes, moneys, mortgages, etc., are handled by the express department of the road as much as by any other express company that you know of here?

(Objected to.)

A. Yes, sir.

Q. You have stated, I believe, you don't know of any dissatisfaction of the public concerning it?

(Objected to, as incompetent.)

A. I do not.

Q. But on the contrary, you continue to grow in patronage at the hands of the public?

(Objected to, as incompetent and irrelevant.

A. Yes, sir.

1052 Q. You could speak, could you, of the manner of its express business, as to whether you took packages simply to be distributed along your own line, or whether they are to go beyond your own line; I mean whether you do not do a general express business, not confined to your own line, but going beyond?

(Objected to.)

A. We do; yes, sir.

Q. You receive packages from connecting lines; we will say, for illustration, from New York to St. Louis; you transmit them, we will say, to Galveston, Texas, do you not?

(Objected to.)

A. Yes, sir.

Q. And if a package was consigned to New York from Galveston over your line, you would receive that and deliver it to this end to be forwarded to New York?

(Objected to.)

A. Yes, sir.

Q. And that is the way all express business is done on all through lines, is it not?

(Objected to.)

A. Yes, sir.

Q. Have you done any considerable amount of that character of business since the organization of your department?

(Objected to.)

A. We have.

Q. What articles would that include—all the articles just above named?

(Objected to.)

A. Yes, sir.

Q. How long has it been since the organization of this department of the railroad?

(Objected to.)

1053 A. Since June 1, 1880; I would like to suggest in my former examination I confused that with the Memphis & Little Rock department, and stated that it commenced on the 15th of June; I find that it was mistaken about that.

Q. Are you acquainted with the Ohio & Mississippi railroad; you know it, don't you?

(Objected to.)

A. Yes, sir.

Q. Tell us whether you know the fact that it is running its own express department; and, if so, how long has it been running it?

(Objected to.)

Q. State if you know any other railroads in the United States that are running their own express departments.

(Objected to.)

A. Yes, sir; the Baltimore & Ohio, and Memphis & Little Rock.

Q. The Louisville & Nashville did for awhile, until they made a contract not to, didn't they?

(Objected to.)

A. Yes, sir.

Q. Do you know any other?

(Objected to.)

A. The Delaware, Lackawanna & Western.

Mr. **Breckinridge**: Do you speak of your own knowledge, or from report?

A. Well I have known that for a number of years, not positively.

Q. How do you know?

1054 A. I can't state positively that they do; we have no business relation with that company.

Mr. **Thoroughman**: Do you know anything about a road that runs from Richmond, Indiana, to Chicago, running its own express department?

(Objected to, unless witness knows of his own knowledge.)

A. No, sir; I don't know what road does run that.

Q. Can you tell us the character of the satisfaction, or the satisfaction, with which the Baltimore & Ohio, and Ohio & Mississippi, and the other railroads you have mentioned as running their own express departments have rendered to the public; whether the public are being as well and satisfactorily served by these railroad express companies as they were by the express companies?

(Objected to, as no proper foundation has been laid, and as incompetent and irrelevant, unless the witness has personal knowledge.)

A. I don't know anything to the contrary.

Q. State if you receive packages from the Ohio & Mississippi railroad to be transmitted South by your line.

A. We do.

Q. State if there is any difference in the management of their express department from any ordinary express company in the country.

(Objected to.)

A. Not that I know of.

Q. They do it as expeditiously, don't they, and as safely and as promptly as any express company?

(Objected to.)

A. Yes, sir.

Q. You have had considerable experience, haven't you, as an express man and railroad man in your life?

1055 A. I have in former years.

Q. How many years have you had experience as a railroad man and express man in those branches of business?

A. Thirteen years.

Q. What is your age?

A. Thirty-four.

Q. State now if, in your experience and conduct of the business, you have any opinion about the capacity of a railroad to run safely and conveniently and with profit to itself, and without loss to the public, an express department. Have you got any opinion as to whether or not they could do that?

(Objected to.)

A. I think they could.

Q. Tell us from your knowledge whether there is anything, in your opinion, to prevent a railroad company from erecting an express department and running it as safely and conveniently to the public as any express company could do that business?

(Objected to, as incompetent and irrelevant.)

A. I don't know of any reason why they could not.

Q. Well, in your opinion, is there any reason why they could not?

(Objected to.)

A. No, sir.

Cross-examination by S. M. Breckinridge, Esq.:

Q. You speak of your experience as a railroad man and express man; will you be kind enough to begin at the beginning and tell me exactly what that has been; where did you first work as a railroad or express man?

A. I first worked in the auditor's office of the Merchants' Union Express.

Q. Where was that?

A. Auburn, New York.

1056 Q. And when?

A. Commencing in 1867.

Q. In what capacity?

A. I was clerk in the auditor's office.

Q. What were you charged with as clerk?

A. With the examination of way-bills, and reports of their officers.

Q. How long did you remain there?

A. I was there about two years, I think.

Q. In the same capacity?

A. Yes, sir.

Q. What did you then do?

A. Then I went into an office on the line.

Q. What office?

A. Rome, New York.

Q. What line?

A. The American Express Company.

Q. What were your duties there?

A. I was general clerk in the office?

Q. What office?

A. The American Express Company.

Q. And in what department?

A. In the local office on the line.

Q. As agent?

A. No, sir; as agent's clerk.

Q. Were there any other clerks in that office?

A. No, sir; at that time I was alone.

Q. How long did you remain there?

A. One year.

Q. Then what?

A. Then I went to the Syracuse, New York, office.

Q. Same company?

A. Yes, sir.

Q. What were your duties there?

A. I was making freight way-bills.

Q. Anything else?

A. No, sir.

Q. How long did you remain there?

1057 A. I was there in the neighborhood of two years; I can't remember the exact time.

Q. Doing the same work?

A. Yes, sir.

Q. Where was your next employment?

A. Then I was on the road a year as messenger for that company.

Q. Running where?

A. From Syracuse to Niagara Falls and to Buffalo.

Q. You were a messenger on the train carrying the runs?

A. Yes, sir.

Q. Then what?

A. Then I was in the local office again, at Auburn, New York, for the same company, the American.

Q. Doing what?

A. In the same business, billing freight and money there for the American Express.

Q. Not an agent, but one of the agent's clerks?

A. Yes, sir.

Q. There were several other clerks?

A. Yes, sir.

Q. Well, then what?

A. Then I came West, and went into railroad business at Cleveland, Ohio.

Q. For what road?

A. For the Cleveland, Columbus, Cincinnati & Indianapolis road.

Q. Doing what?

A. In the freight department as a clerk.

Q. For how long?

A. I was there for one or two years.

Q. And how were you engaged?

A. In the same capacity there; part of the time as cashier also.

Q. Were you doing simply clerical work?

A. Yes, sir.

Q. In the freight department?

A. Yes, sir.

1058 Q. Auditor's department?

A. No, sir; in the local agency.

Q. And then?

A. Then I came to Indianapolis.

Q. How were you engaged there?

A. I was employed by the same company in the freight department.

Q. Again as clerk?

A. Yes, sir.

Q. Where did you then come to?

A. Then I came to St. Louis.

Q. When did you come to St. Louis?

A. In August last.

Q. Immediately after you entered upon your duties as auditor of the St. Louis, Iron Mountain & Southern railway?

A. I commenced as auditor on the fifteenth of September.

Q. What were you doing in the interval?

A. I was employed in the auditor's office.

Q. Doing what?

A. As clerk.

Q. Your duties have been, then, all the time those of a clerk?

A. Yes, sir.

Q. For some express company, or briefly for railroad companies?

A. Yes, sir.

Q. Until the 15th of last September, when you became auditor?

A. Yes, sir.

Q. And during most of that time you have been clerk, and simply in charge of accounts?

A. Yes, sir.

Q. Not dealing with the general public?

A. Oh, no, sir; you misunderstand me; I say I was clerk in the local office, and coming in direct contact with the public.

1059 Q. During part of the time, the most of the time, I understand, your duties were clerical, either in the freight or general accounting department?

A. Yes, sir.

Q. Most of the time; you were not, then, for most of the time, brought in contact with the general public at all as patrons of the railroad company or express company?

A. I have stated in my testimony that I was for about two years in the auditor's office, and all the rest of the time, when I was employed by the express company, I was in communication direct with the public—in the local offices all the time.

Q. What are the duties of an auditor's clerk?

A. To examine the accounts under the direction of the auditor.

Q. What accounts?

A. The reports of their officers sent to him.

Q. That is, if I understand, the auditor's office deals exclusively with the accounts of its own road?

A. Yes, sir.

Q. Sent to the auditor by the officers and employés and agents of his own road?

A. Yes, sir.

Q. To examine and correct errors and report upon them?

A. Yes, sir.

Q. He has never anything to do with the public who patronize the road—as auditor?

A. No, sir.

Q. He has never anything to do with the complaints made by the public, if any there are?

A. No, sir.

Q. He does not meet the public at all?

A. No, sir.

Q. It is no part of his duty to see the patrons nor to see the freights?

A. No, sir.

Q. Nor to see the operatives of his own road?

A. No, sir.

1060 Q. But simply to deal with the accounts made by his own people to his own road, and to correct errors that may arise in them?

A. Yes, sir.

Q. Now, whatever unpopularity or dissatisfaction or failure to meet the expectations and reasonable wishes of the public that may exist, the auditor is about the last man to hear of that dissatisfaction, is he not?

A. Yes, sir.

Q. It might be that the express department of the Iron Mountain Railroad Company would be generally unsatisfactory in its methods, conduct, and in its prices to the public dealing with it, and the auditor never know it; might it not?

A. Except by hearsay.

Q. If the storm rose so high as to attract the attention of everybody, the auditor might hear of it?

A. Yes, sir.

Q. He is remote, in fact, from any such thing, is he not, because his dealings are with his own people, and not with the public?

A. Yes, sir.

Q. If I understand—and I would be glad to have you correct me if I am wrong—the prime duty of the auditor and the chief office of his department is to detect errors, if any are made, by the agents of the company against the company?

A. Yes, sir.

Q. And nothing else. You have stated, if I understand, Mr. Clark, that the earnings of the express department of your road from the 1st of June, 1880, to the 1st of March, 1881, were $59,641.89; is that gross or net?

A. That is the net.

Q. Have you the means of giving us the gross; can you tell us what it cost, as well as what it earned?

A. Yes, sir.

Q. Be kind enough to do so.

1061 A. $118,259.69 is the gross earnings.

Q. Have you there the items of that cost distributed?

A. No, sir.

Q. Can you furnish me those items?

A. Yes, sir.

Q. How long would it take to do that, Mr. Clark?

A. Well, in what shape would you want them?

Q. In such shape as you could give them to us here.

A. I can state what the items are.

Q. Can you do it now?

A. I can.

Q. If I understand, then, the difference between the net earnings, $59,641.89, and the gross earnings, which were $118,259.59, from June 1st, 1880, to March 1st, 1881, shows the actual cost of the express department of the company?

A. That would show the amount of the running expenses of the company, such as salaries and rents.

Q. Does that include any charge against the express department for freight, charges by the railroad company, or does it exclude that; that is, do you include in this cost of running your department any charge made by the Iron Mountain Railroad Company against its express department for freight?

A. No, sir.

Q. So that to that difference between those two sums of $59,641.89 and $118,259.69, to ascertain what is the real cost of running the Iron Mountain railroad express department, must be added the proper charge for freight, must it not?

A. What freight do you allude to?

Q. You say that the net earnings were $59,641.89?

A. Yes, sir.

Q. And that the gross earnings were $118,259.69?

A. Yes, sir.

Q. And that the difference between those two sums shows the cost of running and operating the express department?

1062 A. Yes, sir.

Q. And if you were seeking to find what was the full total cost of operating the express service of the Iron Mountain Railroad Company, it would be necessary, would it not, to add either an actual or an estimated price for the service rendered to it by the railroad in carrying these freights, before you could put your computation on an equal footing, as between the express department and any other express company; wouldn't that be necessary?

A. Yes, sir.

Q. If, for instance, the freight charges of the Iron Mountain Railroad Company to the express department were $50,000 a year in gross, and you wanted to ascertain the cost of running the Southern Express Company over your road, as against the actual cost of running the Iron Mountain express department over your road, you would have to add $50,000, or its proportion, to the cost of running and operating the express department of your road, wouldn't you?

A. Yes, sir.

Q. These figures exclude that?

A. Yes, sir.

Q. And you assume, for the purposes of these figures, that it costs you nothing to transport your freight on the railroad?

A. Yes, sir.

Q. It does not include the cost of transportation, then, at all?

A. No, sir.

Q. You assume that that is given by the Iron Mountain Railroad Company to the express department without charge?

A. Yes, sir.

Q. Now, have you the means at hand of giving us the items of this cost, or would you need time to give us that?

A. It would take time to do that.

1063 Q. When would it be convenient; some time within two or three days?

A. Yes, sir.

Q. It will be understood that when we adjourn you will make up for us that computation?

A. Yes, sir.

Q. Will you be kind enough, also, at the same time, to distribute for me this $59,641.89 among the various branches of freight and traffic on which it is earned; either distribute it on that or on the $118,259.69, whichever is most convenient. I want to know how much is earned for carrying money and bulked freights, etc.

A. I don't think the accounts are in such a shape that I can do that; only the total amount from all sources.

Q. Can you at least do this: Can you ascertain how much of the $118,259.69 is derived from your business with the Southern Express Company?

A. It can be done, but it would take some time to do it.

Q. How long?

A. Several days.

Q. Don't you think you can do that by the middle of next week?

A. I think so.

Q. The work that you did for the Southern Express Company was all done on the train, was it not, and was merely hauling without any regard to accessorial service?

A. Yes, sir.

Q. You did no hauling of the Southern Express Company's freight at any time, did you?

A. Not that I have knowledge of.

Q. It was delivered into the cars, and it was taken out of the cars by the Southern Express Company's people?

A. I understand it so.

1064 Q. And all the service you rendered was merely transportation?

A. Yes, sir.

Q. And for that service, as I understand, you paid nothing to the Iron Mountain Railroad Company for transportation?

A. No, sir.

Q. So all that you got from the Southern Express Company in that time was clear gain to you, because you paid nothing for it, and did nothing for it; am I not right?

A. We transported the freight for it.

Q. That is, the Iron Mountain Railway Company did, but not the Iron Mountain railway's express department?

A. No, sir.

Q. The Southern Express freight was all delivered in the cars by the Southern Express people, and all taken out of the cars by the Southern Express people?

A. I so understand it.

Q. So that you rendered no accessorial service of any kind to it during its passage?

A. No, sir.

Q. You paid nothing to the Iron Mountain Railroad Company for the transportation of any of your express matter?

A. No, sir.

Q. So that what you got from the Southern Express Company was absolute net gain, without any work at all by the Iron Mountain express department?

(Objected to, by defendant's counsel.)

Q. Then I understand you to say, in this computation which you have given us, nothing was included for transportation over the Iron Mountain railroad in any event?

A. No, sir

1065 Q. Now, then, you rendered no service to the express department except to transport its freight over the road, did you?

A. To the Southern Express Company?

Q. Yes.

A. That is all.

Q. Therefore, if you paid nothing to the Iron Mountain Railroad Company for transportation, and did nothing for the Southern Express Company but transport, you actually got from the Southern Express Company all you got for it without any outlay at all, didn't you?

(Objected to, as argumentative, and that it is not a proposition or question to be answered by the witness.)

A. Yes, sir.

Q. Can you state, Mr. Clark, what proportion these rates and this amount of earnings bore, if you know, to the former rates and the former earnings under the contract or arrangement between the Southern Express Company and the Iron Mountain Railroad Company?

A. I have no accounts with the Southern Express Company previous to the time I speak of.

Q. And your answers now are based entirely upon the reports in the shape of statements of account that are made by the Iron Mountain railroad express department to you?

A. Yes, sir.

Q. You have no knowledge of any part of the matter except what the clerks, agents, and officers of the express department make to you?

A. Yes, sir.

Q. If I understand, Mr. Clark, you stated that your experience, the nature of which you have just detailed to us, did not enable you to see any difficulty in the conduct of an express department by a railroad company for itself?

A. I so stated; yes, sir.

1066 Q. Do you think that you have had, as clerk for the various express companies, and as clerk for the various railroad companies, being now for the first time in charge of an office, that your experience justifies you in forming and expressing an opinion concerning that matter at all?

A. Possibly not; I express my own opinion.

Q. Is that opinion based upon such a limited experience in an unimportant position as you have had such as you would be willing yourself to be governed by in the use of capital by yourself and others to any large amount; I want to know the value of your own opinion, based upon such limited experience as you have shown you have had?

A. Well, perhaps my knowledge of the business would not enable me to form an opinion that would be worthy or a sufficient one to invest money upon.

Q. Do you think it would?

A. Well, that is a question I cannot answer, Mr. Breckinridge.

Q. Can you see any difficulty, for instance, on the part of the Iron Mountain railroad express department to be incurred in taking for collection accounts C. O. D., or a draft on Portland, in Maine; that is, to a point a thousand miles beyond your northern terminus?

A. That is an account we should not take at all; we have no means of reaching Portland.

Q. If I understand, your express department would refuse to carry a parcel C. O. D. to Portland, Maine?

A. Yes, sir.

Q. And would refuse to take a draft for collection on Portland, Maine?

A. Yes, sir.

Q. Because it is beyond your line?

A. It is not in our territory at all.

Q. In the same way, I suppose, you would refuse a collection, a C. O. D. package, or a draft from here to New York city?

A. Yes, sir.

1067 Q. Or to Baltimore?

A. Yes, sir.

Q. Or to Washington, or to Buffalo, or to Boston?

A. Yes, sir. Well, I will correct that. If you intend to ask if we would receive it here at St. Louis, or at points on our road south of St. Louis——

Q. I will ask you further, so far then as your customers living at Texarkana are concerned, you could not serve them in collections to be made in any of the Eastern cities, either by draft or on parcels?

A. Oh, yes, sir; I answered your question there without thinking, as I ought to have done. I inferred that you meant if we received it at St. Louis for collection at those points; we certainly should receive all those things from points on our line at St. Louis, and collect them at New York.

Q. How would you reach there?

A. By bringing them here and delivering them to the collecting lines.

Q. Would the company issue its receipts on collections or parcels and for bills to be collected in Bangor, Maine?

A. Yes, sir.

Q. Or anywhere else?

A. Yes, sir.

Q. Suppose, for instance, that I had a draft for $10,000 on Boston, which I wanted the company to take for me for collection from Carondelet station, in St. Louis, would they accept it?

A. Yes, sir.

Q. If I understand you, then, the company would issue its receipt for a C. O. D. parcel or draft for collection, for say $10,000, from its lower station in Carondelet, South St. Louis, for me, residing there, on Bangor, in Maine?

A. Yes, sir.

1068 Q. Suppose that the draft was a draft for $10,000 from that place; can you tell me what the charge of the company would be on it to Bangor, Maine, to carry it there?

A. For making the collection?

Q. Carrying it there, collecting the money, and bringing it back.

A. No, sir; I have not the means now of knowing.

Q. Can you give me an idea of the proportion of that amount, suppose it was $100—of the proportion of that amount the Iron Mountain Railroad Company's express department would get for its share of the service?

A. They would get a very small proportion.

Q. I wish you to give me an idea; suppose the whole charge was $100; as near as you can, give me an idea what would be the actual amount paid the Iron Mountain express department for its services?

A. No, sir; not without reference to the tariffs.

Q. Would it be as much as twenty-five cents?

A. Yes, sir.

Q. Do you think it would be more?

A. Yes, sir.

Q. Do you think it would be as much as fifty cents?

A. I don't know what the tariff is.

Q. I know; we speak now in the absence of tariffs, and from your experience and knowledge as an express man; Bangor, Maine, is the place where collections are to be made, and South St. Louis is the place where it starts; do you think, for the whole charge of $100, the Iron Mountain express department would get fifty cents on it?

A. Yes, sir.

Q. Do you think it would get more?

A. Yes, sir.

Q. How much?

A. I can't answer the question.

Q. But it would be an exceedingly small proportion?

A. Yes, sir.

1069 Col. THOROUGHMAN: We will admit it would not be but ten cents.

Judge BRECKINRIDGE: And the same proportion would exist from that point to all points in the United States, according to distances?

A. Yes, sir.

Q. Would the Iron Mountain express department render the same service to and from points in Canada?

A. Yes, sir.

Q. And in Mexico?

A. I don't think there is an express department in that territory.

Q. But it would in Canada?

A.. Yes, sir.

Q. You spoke in your examination-in-chief of a number of railroad companies which were doing their own express business through an express department of their own, and you named, among others, the Louisville & Nashville railroad?

A. It was named as one that had done its express business.

Q. Now, that company was doing an express business with the Southern Express Company, was it not, or the Adams Express Company?

A. I don't know; I suppose they were with all connecting lines.

Q. Wasn't the Southern or Adams doing business over its line before it began to do its own express business?

A. I think they were.

Q. Then, for a brief period, it undertook to do its own express business?

A. Yes, sir.

Q. And then it ceased and went back to the company—the Adams and Southern, and made a contract with them?

A. Yes, sir.

Q. Which now exists?

A. Yes, sir.

1070 Q. Do you know why that was done?

A. I do not know, sir.

Q. Do you understand it was because it proved to be unprofitable to them and to the public both?

(Objected to.)

A. No.

Q. Do you know anything about whether the Baltimore & Ohio is doing its own express business; do you know it?

A. It is; yes, I know that.

Q. How do you know it?

A. Because we do business in connection with them.

Q. You only know as far as you do business with railroads that are doing their own express business?

A. Yes, I know we do business with the Baltimore & Ohio railroad.

Q. But unless you do business with a road you can't tell anything about it?

A. No, sir.

Q. That confines you to the Ohio & Mississippi, the Little Rock, and the Baltimore & Ohio railroad; that is all you know of?

A. Yes, sir.

Q. Those are the only roads, then, that you know of undertaking to do their own express business?

A. All I know of personally.

Q. All you know of; you have heard rumors, but you don't know of any others?

A. No, sir.

Q. Do you know whether some of these companies have not other express companies running on their lines at the same time?

A. That I cannot state.

Q. You don't mean to say that they are doing an express business, and haven't other express companies on their road?

A. No, sir.

1071 Q. But that they are doing their own business, and may be other companies are doing business on their road also?

A. Yes, sir.

Q. Will you please tell me if you received, brought for collection here by your express department a note or bill of exchange, would your company protest it if it was not paid if there was a note to protest it?

A. I don't know what the instructions are from the superintendent to the agents in regard to that.

Q. Don't your rules forbid that to be done?

A. I can't say positively whether they do or not.

Q. Does not your tariff of last December, the 25th, contain a rule forbidding you to protest paper?

A. I am uncertain as to that, and that is the reason I cannot answer the question.

Q. Will you when you come again bring one of those tariffs with you?

A. Yes, sir.

Q. When you take express matter by the express department of the St. Louis, Iron Mountain & Southern Railway Company from here to Galveston, for instance, do you make a through charge from here to Galveston?

A. Yes, sir.

Q. Can you at the moment remember what the through charge to Galveston is per pound package of one hundred pounds?

A. No, sir; I do not know what it is.

Q. But there is a fixed charge?

A. Yes, sir.

Q. What proportion, for instance, of the Galveston charge would the express company of the Iron Mountain railroad take for its services from here to the southern terminus of your road at Texarkana?

A. I don't know the proportion.

Q. Is it the same amount without regard to proportion
1072 which they would charge the Southern Express Company on
an exactly similar parcel, exactly similar in character and weight, carried to Galveston?

A. Carried to Texarkana; we have no dealings with the Southern; the rate is the same to Texarkana as we should charge the Southern Express Company.

Q. Do I understand you to say that if I sent by you a parcel from here to Galveston, the express department of your company would charge me the same price, and none other, that it would charge the Southern Express Company on a similar parcel to the same place—from here to Texarkana?

A. Yes, sir; well, that question—do you mean to ask me if they would charge the same to Galveston that they would charge the Southern Express to Texarkana?

Q. If they would get from me as much for carrying this parcel to Galveston, which is billed through to Texarkana, as from the Southern Express for carrying its parcel to Galveston, which is billed through to Texarkana?

A. They would get the same from here to Texarkana from the parties shipping to Galveston as from the Southern Express Company.

Q. No difference in rate?

A. No, sir; not that I am aware of.

Q. No rebate in your rate from here to Texarkana?

A. No, sir.

Q. Let me be sure that I understand you; suppose that I came to you with a ten-pound package of tobacco to be shipped from here by your express department through your terminus to Galveston; suppose the Southern Express sends by the Iron Mountain Railroad Company express department, on the same day, an exactly similar package of tobacco, also going to Texarkana, and on the same train; do you mean to say that you would collect from me for the Iron
Mountain express department the same price that you would
1073 charge the Southern express department for the service of
carrying it from here to Texarkana?

A. Yes, sir.

Q. There would be no difference?

A. No, sir.

Q. Has that always been so?

A. I understand it to have been so.

Q. What I wish to know is this: Whether if I send, as an individual shipper, a ten-pound package of tobacco from here by your road through Texarkana billed to Galveston, and on the same day day, and with an exactly similar package, the Southern Express Company sends over your road to Texarkana to Galveston, whether you would charge the Southern Express Company the same rate precisely for your service, and get as much profit, as you would from me for the same service?

A. We should charge the Southern Express Company the same amount to Texarkana that we should charge you to Texarkana, if that answers your question.

Q. Do you mean to say that if, in a given case, you would charge me a dollar, and get a dollar for the Iron Mountain express department's services to Galveston, that you would charge only the same price and get only the same price from the Southern Express Company to Texarkana?

A. Yes, sir.

Q. The same price exactly would be charged both for the service?

A. For the service to Texarkana.

Q. And you have no pro-rating arrangement with any express company between Texarkana and Galveston at all?

A. Not that I know of.

Q. Would you know it if there were?

A. If there has been any such arrangement, I don't know it.

1074 Q. If I understond, you do not, as auditor of the road, know anything about the pro-rating arrangement beyond your terminus?

A. Well, I don't want to answer that in that form; no, sir.

Q. Do you mean to be understood as adhering to your answer; that is, as saying you don't know what the pro-rating arrangements are?

A. As to Texas, I will answer that; yes, sir.

Q. What do you mean by that; that you adhere to your aaswer?

A. I mean that I don't know what the arrangements are as to Texas.

Q. Do you know whet they are anywhere as to pro-rating?

A. Yes, sir.

Q. Well, tell us; going North from Texarkana to New York, over the line of your road, does the Iron Mountain express department get as much on a five-pound package coming from Texarkana to New York, in proportion, as it does coming from Texarkana to St. Louis?

A. Yes, sir.

Q. Precisely the same?

A. The same rate.

Q. In proportion?

A. Yes, sir.

Q. Is there no rebate?

A. No, sir.

Q. Is there no pro-rating arrrngement with any company?

A. Yes, sir.

Q. Suppose you take a five-pound package that comes from Cincinnati through by the Ohio & Mississippi express department to Texarkana over your road—do you mean to tell me that the Iron Mountain express department gets the same amount out of the
1075 whole charge from Cincinnati to Texarkana that it would
get, and only that, for carrying the package for the Southern Express Company from here to Texarkana?

A. Yes, they get the same.

Q. And no more from the Southern Express Company than from the other?

A. The same in proportion.

Q. Well, what is the difference, now; what is the proportion?

A. I don't understand your question clearly, Judge?

Q. Don't you take packages coming from Cincinnati over the Ohio & Mississippi through St. Louis and over your road to Texarkana at one rate, on through bills?

A. We have those articles billed through to Texarkana.

Q. At one rate?

A. Yes, sir.

Q. Now, do you mean to tell me that the Iron Mountain Railroad Express Company gets as much for carrying that parcel over that part of the route, which is its route, as it would from the Southern Express Company for carrying over the road from St. Louis to Texarkana?

A. As I understand, they do get the same amount.

Q. If a shipper sends from Cincinnati to Texarkana by way of the Ohio & Missippi express and the Iron Mountain express, have you not one rate which would be charged for the entire service?

A. We make a rate through.

Q. Do you not pro-rate on that rate with the Ohio & Mississippi express department?

A. Yes, sir.

Q. Now, for the service rendered by the Iron Mountain express department, does it get the same price that it would charge
1076 the Southern Express Company for carrying a package from
St. Louis to Texarkana?

A. Yes, sir.

Q. Exactly.

A. Yes, sir.

Q. And, therefore, whatever discount there is on the rate from Cincinnati to Texarkana, you do not suffer from, but the Ohio & Mississippi must bear it?

A. Why, the companies get their rate by adding the two rates together, sir.

Q. Do not they use one classification for those two rates?

A. No, sir.

Q. I am so convinced that you do not understand me, or that I have been grossly misled in understanding your former testimony, that I will ask you again.

Mr. BROADHEAD: I understood him awhile ago that he didn't know anything about these rates.

Mr. BRECKINRIDGE: If he will say so, I will not press him any further.

Q. Do I understand you, then, to mean that you charge exactly the same price upon a package sent by a shipper through from Cincinnati to Texarkana, for the part of the service you render, as you would for a parcel started from St. Louis and going to Texarkana?

A. You mean charge the same from Cincinnati that we would from St. Louis?

Q. Whether you charge the same for the part of the service rendered by you—that is, from St. Louis to Texarkana.

A. As I understand, they do charge the same.

Q. Will you, then, say whether the charge made by the Iron Mountain to the Southern Express Company for a parcel going from St. Louis to Texarkana, is the same as the charge made against an
exactly similar package would be through from Cincinnati
1077 over the Ohio & Mississippi and Southern Express Company
and Iron Mountain to Texarkana?

A. No, sir; it is not the same.

Q. In what does it differ?

A. How much does it differ?

Q. Yes, sir.

A. Well, it is less.

Q. Can you tell how much less?

A. No, sir.

Q. Can you tell the proportion?

A. No, sir.

Q. But there is a discrimination in favor of the package that comes through from Cincinnati from that which the Southern Express would send from St. Louis to the same terminus?

A. Yes, sir.

Q. And that is habitual?

A. Yes, sir.

Q. And applies to all shipments?

A. Yes, sir.

Q. Does it apply to the Pacific Express?

A. Yes, sir.

Q. And to all matter transferred to it here by the Pacific Express?

A. Yes, sir.

Q. Then you discriminate against them as you do against the Southern Express Company, or any other shipper who starts from here?

A. Yes, sir.

Q. Do you wish to be understood that you charge the same rates exactly to the Pacific that you do to the Southern on goods which go from here on the Iron Mountain sent by the Pacific?

A. Shipped by the Pacific Express from St. Louis?

Q. From St. Louis.

A. No, sir; I do not; I understood you to ask, coming over the line from the Pacific in a similar way as it came over the line of the Ohio & Mississippi, and I answered that way.

1078 Q. Do you charge the same rates to the Pacific Express Company for services over the Iron Mountain railroad that you do to the Southern Express Company?

A. No, sir.

Q. In what do they differ?

A. We bill through into the territory of the Pacific Express Company.

Q. Now, then, will you be kind enough to tell me what arrangements are made by the Pacific Express, which ships matter over the line of the Iron Mountain & Southern railroad—what are the arrangements made with the Pacific Express Company shipping from St. Louis?

A. The Pacific Express bills through over our line into the territory south of us.

Q. What arrangements have you as to rates?

A. The rate is made by adding the two rates together.

Q. And making any deduction?

A. I don't know what the arrangements are in full, as they have only just commenced business a short time ago.

Q. Are they in the form of a written contract?

A. I don't know, sir; I say I don't know what the arrangements are in full, as they have just commenced doing business.

Q. You understand they have pro-rating arrangements with the Pacific Express?

A. Yes, sir.

Q. By which the rate from here to your terminus is pro-rated with them?

A. Yes, sir.

Q. And is less than the rate from here to your terminus, as charged the Southern Express Company?

A. Yes, sir.

Q. And that is habitual?

A. Yes, sir.

1079 Q. And applies to all matter going over your line for the Pacific Express?

A. Yes, sir.

Q. And makes a difference in the rates charged them, and charged the Southern Express in all cases?

A. Yes, sir.

Q. Do you weigh the Pacific Express matter habitually that goes over your line, or do you know?

A. I don't know, sir, in regard to that.

Q. You don't know how that is?

A. No, sir.

Q. These earnings—to come back to another question—do these earnings, the amount which you gave in your examination-in-chief, in your answers to Col. Thoroughman, embrace the six times charges on merchandise rates on safes of the Iron Mountain Express Company, and the three times merchandise rates on sacks and boxes of the Southern Express Company, which you have been charging?

A. Yes, sir.

Q. Just to direct your attention to one point on which I think your testimony was either incorrect, or you did not comprehend my question—were you not shown on a former examination some of your July way-bills, on which meat was billed from St. Louis to Malvern at $1.50 for your department, and $2.00 for the Southern Express department?

A. I think there were cases of that kind in July.

Q. Does not that show that you are in error in the answers you have made to my questions here, and that there are discriminations against the Southern Express Company to that extent by your road in the rate?

A. Well, there may have been cases like that one Col. Agee refers to.

1080 Q. Don't you see the fact that it was so, that there was a discrimination in some cases?

A. Yes, sir.

Q. You are not able to say how many?

A. No.

(At this point, by consent of parties, an adjournment was had until Tuesday, April 5, 1881, at 2 p. m.)

St. Louis, *April* 5, 1881, 2 P. M.

(Parties met pursuant to adjournment, and a further adjournment was had to 2 p. m., April 6th.)

1081 St. Louis, *April* 6, 1881.

Parties met pursuant to adjournment, when the cross-examination of M. M. Clark was resumed, as follows:

By Judge Breckinridge: Did you secure for us the figures that you were kind enough to say you would get for us?

A. Yes, sir.

Q. Have you got them?

A. Yes, sir.

(The paper referred to was marked "Exhibit 1" to Clark's deposition.)

Q. The paper which you hand me, I understand, contains, in answer to my request, the expenses of the express department of the St. Louis, Iron Mountain & Southern railway from June 1, 1880, to, and including, February 28, 1881?

A. Yes, sir.

Q. The aggregate being $59,698.80?

A. Yes, sir; expenses. The earnings from the Southern Express Company you wanted me to get; I find it is almost impossible to get them?

Q. Why?

A. Because they have not been kept separately from the other earnings.

Q. How long would it take you to ascertain that?

A. It would take some time; we should have to go through with our way-bills one by one to get it.

Q. You are aware we have the June accounts almost complete?

A. Yes, sir.

Q. Against the Southern Express Company?

A. Yes, sir.

1082 Q. Are you familiar with the amount of that account?

A. I don't know exactly what item is covered by that; that was before I took the office; there is a matter of something over $6,000 charged to the Southern Express Company.

Q. $6,140, and odd, after allowing a credit of $1,000 paid, isn't it?

A. Yes, sir.

Q. It included not the whole month of June, but from June 2d to June 28th, I think, didn't it?

A. I can't remember positive as to the items; it was before I took charge.

Q. This suit pending in the United States circuit court and the record will show.

A. I would like to make a suggestion in regard to that; I find a difference of $81.00, which will make the amount of net earnings given you $81.00 less than was given to you on the last examination; that is, the expenses, which have been increased $81.00; it would make the items $81.00 less.

Q. You find yourself entirely unable to give us the figures showing the various sources from which this revenue was derived?

A. Yes, sir.

Q. How long would it take?

A. To show the earnings from the Southern Express Company?

Q. From the various sources; first, from which that income was derived, and then how much of the income was derived from the Southern Express Company?

A. It would take several days' continuous work.

Q. Don't you think you could do it inside of a week?

A. No, sir; it is an endless job, almost.

1083 Q. The net amount received from the Southern Express Company, and included by you in the figures given to us the other day, did you include what has been paid upon the Southern Express Company to the St. Louis, Iron Mountain & Southern railway for messengers' fares?

A. No, sir.

Q. So that in returning the money paid to your railway company for express freight carried for the Southern Express Company we must add to these figures messengers' fares, if any have been paid?

A. Yes, sir.

Q. You are aware that a large amount has been paid, are you not?

A. I have heard it stated so.

Q. The amount for which this attachment suit was brought against the Southern Express Company by the St. Louis, Iron Mountain & Southern Railway Company for the month of June earnings, in part, is that included in those figures of yours?

A. Yes, sir.

Q. That is a part of this $118,000 gross earnings, which you gave us the other day?

A. Yes, sir.

Q. You treat that as though it had been paid in making your calculation?

A. It is so treated; yes, sir.

Q. Now, will you be kind enough to show, as near as you can give us, the figures of the amounts paid by the Southern Express Company to you; and be kind enough to tell us what relation those earnings, which you claim for the month of June, a part of it, what relation they bear to the other earnings; are the earnings for the remaining period in the same proportion; less or more?

A. Well, that I can't state, because I have not the total in the period of time.

1084 Q. Can you tell us whether the volume of the business done by your railroad company for the Southern Express Company has been greater or smaller than it was during the month of June?

A. No, sir.

Q. Does your general knowledge as auditor enable you to state whether those earnings have been materially different in the period that has since elapsed from what they were doing the month of June?

A. No, sir.

Q. If there had been any marked increase or decrease, you, as auditor, would have known it, wouldn't you?

A. Only as it affected the earnings of the entire department.

Q. You would have been bound to notice it if there was a marked increase or decrease, wouldn't you?

A. I should certainly notice a marked increase or decrease in the amount of business.

Q. This Southern Express Company is very much the largest patron that you have of the express business, is it not?

A. I think we do receive more from that than any other.

Q. Isn't it very much larger than all your other patronage put together in the express line?

A. From St. Louis you speak of?

Q. Yes; or along your whole road.

A. I think it is; yes, sir.

Q. Larger than all the others?

A. Yes, sir.

Q. If there had been any marked change since June in the earnings from that portion, would you not, as auditor, have been certain to know it in the discharge of your duty?

A. I should in that way, as I said before.

1085 Q. So I am right in saying that there has been no diminution noticeable in the volume of the earnings of the St. Louis, Iron Mountain & Southern Railway Company from the Southern Express Company for freights since June?

A. Since the first of January, 1881, the earnings have been less than they were prior to that time.

Q. But not before?

A. No, sir.

Q. Have they been materially less since the first of January, 1881?

A. There has been a slight falling off.

Q. In all your business?

A. Yes, sir.

Q. Has there been a falling off in the Southern Express Company as compared with the other business?

A. I can't state as to that no more than I can as to the other.

Q. If there had been a marked falling off, you must have known it?

A. As it affected the entire road.

Q. And, therefore, it could not have been largely out of proportion to the others?

A. No, sir.

Q. Will you be kind enough to state whether this account that is in "Exhibit 1" to your testimony of $58,098.80, being the expenses of the express department of the Iron Mountain Railway Company from June 1, 1880, to February 28, 1881, there is included any of the cost of the original equipment of the department?

A. No, sir; there is not.

Q. This account covers simply the regular running current expenses of that company?

A. Yes, sir.

Q. But not the original expenses in any respect of the plant, teams, horses, office furniture, and the like?

A. No, sir; it does not.

1086 Q. I see here an item of general salaries, ditto, $9,932.03; what is that general salaries?

A. That is general office salaries.

Q. Your proportion of the general office salaries?

A. Yes, sir; that is the general salaries of the superintendent and the route agents, and of the general offices—the auditor's office.

Q. Your proportion of that?

A. Yes, sir.

Q. What is N. R. salaries?

A. Salaries of agents of non-reporting offices.

Q. Line salaries?

A. Messengers.

Q. General salaries?

A. Salaries of the superintendent and general offices—auditor's office.

Q. Please explain what you mean.

A. Expenses incurred at offices.

Q. You mean rent?

A. No; it don't include rent, but gas bills, incidentals.

Q. Fuel?

A. Yes, sir.

Q. In the line expenses, what does that mean—$741.15?

A. Well, they are expenses incurred along the line of the road? given with the total line expenses.

Q. Give me a sample of that.

A. I can do so very quickly.

Q. Now, I wish you to give me some idea as to the rule on which you distribute them.

A. Well, there are items there of soliciting.

Q. Does it include delivery?

A. No, sir.

Q. Soliciting; did I understand you correctly?

A. There are such items included there.

Q. That is, money paid to some employé for going about seeking freight, is it?

A. Yes, sir.

1087 Q. Well, any other kindred expenses?

A. There are quite a number of expenses that were put in that class; I don't remember now what they are; I could tell by reference.

Q. They are expenses chargeable to the whole line, rather than to this particular office?

A. Yes, sir.

Q. These general expenses, $3,441.44, what is that?

A. Expenses incurred by route agents on the line.

Q. For food and lodging?

A. Yes, sir; for traveling expenses.

Q. What do you mean by traveling expenses?

A. They are continually traveling; it is their board and railroad fare, if any.

Q. Well, does it include any railroad fare?

A. It would include it.

Q. I ask what it does include, not what it might.

A. Well, it includes traveling expenses.

Q. Now, what do you mean by traveling expenses?

A. Why, their board.

Q. You mean their board when not traveling?

A. When they are employed.

Q. A man stops to eat at a wayside place?

A. Yes, sir.

Q. And it is included?

A. Yes, sir.

Q. And he sends in his voucher for one dinner, fifty cents?

A. If that is the only one, he will do it; yes, sir.

Q. And if it is ten cents, he charges ten cents; now, you say, the railroad expenses, if any, are all paid for?

A. For sleeping-car fare, they are.

Q. No; let us dispose of one thing first; it is paid for?

A. Well, if he travels.

Q. If a man travels in his own wagon, does he pay, and for what? I wish to know whether, in point of fact, it does include any
1088 money paid for railroad fare to anywhere; general expenses charged in this bill from June 1st to January 28th, $3,441.44 Does it actually include railroad fare, paid by any messenger to go anywhere?

A. It does include, if they paid any fare; I am not able to say whether they did.

Q. Of course; but did they pay anyhow?

A. If they went off the line of our road.

Q. If they went; but did they go?

A. Often; yes.

Q. Tell us how and where.

A. Oh, to the lines of some other railroad, if their business should call them there.

Q. Be kind enough to tell me what lines of railroad your express department messengers run upon, except the Iron Mountain railroad.

A. They are not messengers.

Q. Well, who then?

A. Route agents.

Q. The messengers do not?

A. No, sir.

Q. These are traveling expenses of anybody that happened to be traveling off your line, for you, on the business of the express department?

A. Yes, sir.

Q. Route agents traveling off the line of your road in the service of the express department of your road?

A. Yes, sir.

Q. Now be kind enough to tell me if you have any such route agent; do you know any route agent that you have who travels for your department, the express department, off the line of the Iron Mountain railroad?

A. I presume it has occurred.

Q. You presume it has; but we are not talking of presumptions, we are dealing with actual figures—$3,441—and you tell me
1089 it is the expenses of the route agents when traveling off the line of your road; now, I ask if you have any such man, and are you not mistaken that you have any such man so engaged?

A. Not continuously engaged, but if they should call them.

Q. Were any ever engaged in that way?

A. I think it has occurred.

Q. But the instances are exceedingly rare?

A. Yes, sir.

Q. And the amounts exceedingly small?

A. Yes, sir.

Q. A very small proportion of the $3,441?

A. Yes, sir.

Q. Can you tell me of any other items that go to make up that?

A. I don't know that I could name them now.

Q. This stable expenses—what is that—$2,326.48; is that stables in St. Louis?

A. No.

Q. All the stables of your department everywhere?

A. Yes, sir.

Q. Stationery, printing, etc., $6,359.00; does that include stationery and printing for the whole express department of your service?

A. Yes, sir.

Q. Advertising, $750.34; is that the same?

A. The same.

Q. Postage, $16.50; is that also the same?

A. Yes, sir.

Q. Insurance, $54.67; is that the same?

A. Yes, sir.

Q. Taxes, $124.15; loss and damage, $21.76; what is that—a settlement with dissatisfied claimants?

A. Yes, sir; comes under that head.

Q. Transporting, $430; what is that?

A. For transferring at Cairo across the river.

1090 Q. From the end of your road to the roads on the other side—that is the only item to make up that charge?

A. From Bird's Point to Cairo.

Q. Done how?

A. By steamer.

Q. Belonging to whom?

A. I don't remember.

Q. Not belonging to the Iron Mountain Railroad Company?

A. I can't state as to that.

Q. The last item, $926.70; what is that?

A. Those were expenses incurred previous to the time the company commenced actually to do business.

Q. I thought you told me this did not include any of the cost of the plant and equipment?

A. These were salaries of the route agents and superintendents.

Q. Called outfitting expenses?

A. Yes, sir.

Q. Not included under salaries?

A. No, sir; not included under salaries.

Q. Not included under any of these items—office salaries or general salaries?

A. No, sir.

By Mr. Shepley: How is the net revenue of the express department of the St. Louis, Iron Mountain & Southern railway disposed of; does it go into the general treasury?

A. Yes, sir.

Q. And therefore there is no particular fund kept for the benefit of the express department of the St. Louis, Iron Mountain & Southern Railroad Company?

A. No, sir.

Q. Does the auditor of the express department keep an ac-
1091 count of what is known as the express department of the Memphis & Little Rock Railroad Company?

Objected to, as incompetent, immaterial, and irrelevant.

A. Yes, sir.

Q. What is the revenue of the express department of the Memphis & Little Rock Railroad Company, and to whom is it paid over?

A. How is it disposed of?

Q. Yes, sir.

A. To the treasurer of the Memphis & Little Rock Railroad Company.

Q. You didn't give me the revenue of the Memphis & Little Rock Railroad Company; you said that it was paid over?

A. I answered your question as I understood it.

Q. I will ask you what are those revenues of the express department of the Memphis & Little Rock Railroad Company; and I will ask you to give us the amounts from the beginning to the end, as far as you can.

Objected to, as irrelevant and incompetent.

A. I cannot give them without reference to the accounts.

Q. But you have them?

A. Yes, sir.

Q. Please furnish them at some future time. Do the amounts that you say appear in your accounts as auditor, received from the Memphis & Little Rock Railroad Company, include any amounts that came from the Southern Express Company?

A. Yes, sir.

Q. I wish you to furnish the accounts that the Memphis & Little Rock Railroad Company received in the express department, distinguishing between that which is received from the St. Louis,
1092 Iron Mountain & Southern Railway Company proper, and
the express department, and that received from the Southern Express Company—those accounts which I asked you about of the Memphis & Little Rock Railroad Company; now, what are the arrangements between the express department of the St. Louis, Iron Mountain & Southern Railroad Company and the Memphis & Little Rock Railroad Company?

Objected to, as irrelevant, incompetent, and indefinite, because the word "arrangement" is not specific as to whether it refers to an established tariff that they were to get, and it is vague, indefinite, and uncertain.

A. In what respect?

Q. Do they way-bill through you and from each other's offices, and do they observe and charge only one classification for carrying matter over the lines of both companies?

A. They do bill through into each other's lines.

Q. And do they observe only one classification for carrying the matter over the line of both companies?

A. They do; they have one classification.

Q. Explain what you mean by one classification over the line of both companies, in the matter of express.

A. Often the employés classify on the through route.

Q. That is, it don't have a separate classification in the line of different express companies?

A. No, sir.

Q. But one classification goes through, irrespective of what line it passes over?

A. Yes, sir.

Q. What is the effect of such classification upon the expenses of forwarding express matter to the forwarder?

A. It makes it lower and less to the public.

1093 Q. How is the revenue on such through business divided between the two companies or express departments; that is, how is it prorated? You say it has one classification through.

A. Yes, sir.

Q. How is it prorated?

A. The per cent. is made by adding the two rates together and dividing in that way.

Q. Equally per mile?

A. No, sir; the rate per cent. is based on the rates and not the mileage.

Q. Well, explain how it is divided between—what proportions?

A. Why, further than that, the per cent. is made by adding the two local rates together, and the per cent. is arrived at in that way, and they are divided on that percentage.

Q. Do you mean to say the through rate is the sum of the two rates?

A. Yes, sir; the two local rates added.

Q. In all cases?

A. Yes, sir.

Q. Isn't it more on packages under one hundred pounds?

A. Isn't the rate more, do you mean?

Q. Yes; wouldn't the two rates be greater on packages under one hundred pounds than the rate charged on one classification; don't you make a lower rate?

A. Rates under one hundred pounds?

Q. Yes, sir.

A. No, sir; we don't.

Q. How do you explain, then, what you said a little while ago, that the result of one classification through produces a less expense to the forwarder than if it was a separate classification?

A. I did say that it was less; yes, sir.

1094 Q. That is what I wish you to explain; you say that having one classification on the two roads makes a less rate to the forwarder?

A. Yes, sir.

Q. How is it, then, that you say it is the sum of the separate classifications of each express company's department?

A. One referred to the rate and the other to the classification.

Q. You say there is one classification; you say it is the same in both companies, and that it results in a lower rate; is that so?

A. I say that we make one classification, if that answers your question; I don't know that I really understand what your question is.

Q. Have you any through traffic arrangements with the Pacific Express Company?

A. Yes, sir.

Mr. **Thoroughman**: Do you know anything about that; and, if so, what is it?

A. Well, I know this, that we bill through into their territory, if that is what you want.

Mr. **Shepley**: Have you any running arrangements with them, by which you make a through rate for goods which are to be sent through your express department, or into territories which are occupied by the Pacific Express Company?

A. We have through rates; yes, sir.

Q. And have made arrangements with them to that effect?

Judge **Breckinridge**: Is that arrangement in writing?

A. I have never seen it. Well, about any running arrangements, we are furnished with through rates from Chicago to points on our line; the rates are furnished to us by the superintendent, Mr. Aikin.

1095 Mr. **Shepley**: He is your own express superintendent?

A. Yes, sir.

Q. Have you arrangements with them to that effect?

A. Well, I don't know what arrangements there are, further than instructions were received from our superintendent as to the rates.

Q. That is your superintendent?

A. Yes, sir.

Q. What I wish to know is, whether you know of any arrangements made between the express department of the St. Louis, Iron Mountain & Southern railroad and the Pacific Express Company, in relation to the through rates on your road, and extending into others?

A. No, sir; I don't know anything about the arrangements made between these departments.

Q. You don't know whether they have such arrangements, and don't know whether they have not such?

A. I do not.

Q. You spoke a little while ago of running arrangements of tariffs on goods shipped from Chicago, and coming upon your line and being delivered to the Pacific Express Company, in territory occupied by them; what did you mean by that?

A. My answer was, I think, coming into the territory of the Iron Mountain express and being delivered.

Q. Does the express department of the St. Louis, Iron Mountain & Southern Railway Company have any through arrangements with the Pacific Express Company for the goods taken by that company and brought from Texas upon your line?

A. I don't know anything about that arrangement.

1096 Q. Do you know of any arrangement made by the express department of the St. Louis, Iron Mountain & Southern railway for the transportation of freight taken on board at St. Louis, to be delivered to the Pacific Express Company in Texas or elsewhere?

A. No, sir; I don't know anything about the arrangements.

Q. Do you know of any tariff being made by Mr. Aiken, the superintendent of the express department of the St. Louis, Iron Mountain & Southern railway, with the Pacific Express Company, in relation to the transportation of express matter?

(Objected to, because it has been answered three or four times that he don't know anything about it.)

A. No, sir.

Q. Do you have one rate for express matter taken on board at St. Louis by the express department of the St. Louis, Iron Mountain & Southern Railway Company with the Pacific Express; I mean for express matter carried beyond into the territory occupied by the Pacific Express Company, beyond the line of the St. Louis, Iron Mountain & Southern railway?

A. Does this mean over the Iron Mountain to Pacific territory from Chicago?

Q. I don't care which way it is, or where it is; do you have any such thing with that company; have you any arrangement of that kind?

A. I don't know what arrangements have been made with that company.

Q. Did you not just say that the express department of the St. Louis, Iron Mountain & Southern railway had a tariff regulating the charge to be made on express matter going over the line of your road into the Texas territory, and to be delivered to the Pacific Express Company?

A. No, sir; I said from Chicago to points on our line.

1097 Q. To points on your own line?

A. Yes, sir; that was the tariff I referred to.

Q. Do you mean to say there is no such tariff?

A. No, sir; I don't mean to say that; I mean to say I have never seen the tariff.

Q. You don't know whether any such tariff exists or not?

A. I can't say of my own knowledge; no, sir.

Q. Then you don't know whether one classification is charged all the way through from here to parts of Texas beyond your own line or not, to be carried by the Pacific Express Company?

A. No, sir; I do not.

Q. Do you do business with the Pacific Express Company for goods carried over the line of your road and going into Texas, to be transported by the Pacific Express Company on the same terms that you delivered goods to the Southern Express Company at same places?

A. I don't know what arrangements have been made with the Pacific Express Company.

Q. Therefore, as I understand, you know nothing about that arrangement, or what is charged in reference to articles which are taken up by the Southern Express Company, which are to go or to be transported by it and delivered to the Pacific Express Company in Texas.

A. No, sir.

Q. Mr. Clark, does not the express department of the St. Louis, Iron Mountain & Southern railway charge and obtain from the Memphis & Little Rock Railroad Company, for express charges on goods received by the express department of the St. Louis & Iron Mountain & Southern Railway Company from the Memphis & Little Rock railroad, less than they do from the same class of goods carried the same distance, received from the Southern Express Company; do you not make a discrimination in favor of the Memphis & Little Rock Railroad Company? 1098

(Objected to, as incompetent and irrelevant.)

A. If goods are billed through from the Memphis & Little Rock Railroad Company they certainly are slightly less than they would be for local shipments.

Q. Are they not all billed through in the same manner and to the same points—into one just as much as the other?

A. All matter belonging to the express department of the Iron Mountain railroad is billed through; yes, sir.

Q. Don't you realize less upon matter shipped through the express department of the St. Louis, Iron Mountain & Southern railway to Hot Springs, weighing less than one hundred pounds, than you do upon the same matter shipped to Hot Springs by the Southern Express Company?

A. Yes, sir.

Q. Do you not realize a good deal less in the case which I have put?

A. There is quite a difference; I don't know just how much, sir.

Q. Can you express the difference by a percentage?

A. No, sir; I don't think I can.

(The last answers of the witness having been read over to him, he said:)

I wish to make an explanation in regard to that; I had that answer confused with the Memphis & Little Rock that you are just speaking of; the amount received on the Hot Springs business is the same.

Q. Then there is a difference in the express matter received from the Memphis & Little Rock railroad, sent to the Memphis & Little Rock railroad—between that and the Southern?

A. There is, for the reason that we bill through.

1099 Q. Does the express department of the St. Louis, Iron

Mountain & Southern Railway Company make through bills to Hot Springs?

A. Yes, sir.

Q. Do you know how the revenue is prorated between your road and the Hot Springs railway?

A. Yes, sir; the rate is made by adding the two rates together.

Q. Charging one classification?

A. Two classifications.

Q. Do you have anything to do with keeping the accounts with the Hot Springs Express Company?

A. No, sir.

Q. Do you keep the express earnings of the St. Louis, Iron Mountain & Southern railway strictly separate and distinct from the earnings of the Memphis & Little Rock railway?

A. Yes, sir; we do.

Redirect examination by Col. **Thoroughman**:

Q. Suppose Mr. Shepley was to hand a package to me to be transported from here to Texarkana, weighing ten pounds, and the Southern Express Company handed to you a package for the same destination, and of the same weight; what would be the charge in reference to those two packages as to being the same price?

A. The charge would be the same.

Q. Be identically the same?

A. Yes, sir.

Q. Now, suppose Mr. Shepley's package, instead of having for its destination Texarkana, was to go on to Galveston, and the Southern Express Company's package was to have its destination at Texarkana; then which of those packages would you get the least money on?

1100 A. Why, if the package for Galveston was billed through, the company that prorated that, they would certainly get slightly less.

Q. So you would get a little less out of Mr. Shepley's package than you would out of the Southern Express Company's package?

A. Yes, sir.

By Judge **Breckinridge**: Do you mean to say you would thus get a little less amount out of the package that Mr. Shepley sent than out of the Southern Express Company's package; is that what you mean?

A. Yes, sir.

Q. Just reverse it; suppose the Southern Express Company would send a package and bill it from here, over the Iron Mountain Railway Company, asking you to bill this package to Galveston; I will ask you whether you would get less out of that package than you would if it was billed simply to Texarkana?

A. Are you referring to two packages?

Q. No; one.

By Col. **Broadhead**: Wouldn't you treat the Southern Express Company, if you undertook to carry a package through from here to Galveston, in the same way that you would treat anybody else or any other company?

(Objected to, as leading.)

A. Yes, sir.

Q. That is, you would reduce the charge for transportation on the through line to Galveston in favor of the Southern Express Company in the same way that you would reduce the charge on the through transportation to Galveston in the other company, or to the Iron Mountain Railway Company itself?

(Objected to, as leading.)

A. Yes, sir.

1101 Q. There was one thing that I wished you to explain in your testimony; if I understand, the inference that these gentlemen gave to what you stated was, that all the money of the Iron Mountain express department comes from the Southern Express Company?

A. No, sir; I didn't mean to say that; I don't think I answered in any such way.

Q. Do you want to be understood on the record as saying to Judge Breckinridge that the money derived from the Southern Express Company's business is more than all the other public business that you got?

A. It is more than from any other shipper.

Q. You mean it is more than from any other one person; that is what you mean, is it not?

(Objected to, as leading.)

A. Yes, sir.

Q. Now, I will get you to state how long it would take you to make up the figures showing the various items you were inquired of about by the gentlemen on the other side; can you do it in two or three days?

A. Yes, sir.

Col. Thoroughman: Well, for the present, you may stand aside.

1102 E. M. Morsman, being sworn and examined on the part of the defendant, testified as follows:

Direct examination by Col. Thoroughman:

Q. Where do you reside?

A. At Omaha, Nebraska.

Q. State your age.

A. Forty-one.

Q. Now, I will get you to state what is your business.

A. I am manager of the Pacific Express Company.

Q. Where is the principal territory and original territory of that express company?

A. The Pacific Express Company does business on the Union Pacific railway and leased lines; on the Wabash, St. Louis & Pacific railway, and the Missouri Pacific railway; I don't know as it is necessary to enumerate all the branches of these roads—the Missouri, Kansas & Texas.

Q. If I understand you, your official relation to them is that of superintendent of all those lines—the business of the express company on all those lines.

A. Yes, sir.

Q. How long have you been in that relation to that express company?

A. Since its organization.

Q. About when was that?

A. About the first of November, a year ago—the first of November, 1879.

Q. What were you doing prior to the time you began as superintendent of this express department; what business?

A. For six years preceding I was general superintendent of the Union Pacific railway express department and the Kansas Pacific railway express department.

1103 Q. And of all the roads bearing those names?

A. Yes, sir.

By Judge **Breckinridge**: You state that you run on all the lines of the Union Pacific; you meant the Kansas Pacific, didn't you?

A. No; it is all known now as the Union Pacific, including the Kansas Pacific and leased lines.

By Col. **Thoroughman**: What express and railroad business experience had you prior to those six years you have last named?

A. Well, for ten or twelve years I had been in the employ of Wells, Fargo & Co.; United States Express, and American Express; I don't remember just which years.

Q. Will you tell me through what portions of the country Wells, Fargo & Co. run their express?

A. Wells, Fargo & Co. had charge, and their business was on the Union Pacific railway, with headquarters at Omaha, and I was agent of the United States at Atchison and Omaha at different times, and was in the office of the American and United States Express at St. Joseph, Missouri; I don't remember all the places; I have been in the employ of all these companies in different capacities, and in different parts of the country.

Q. I will get you to state if you have ever made the railroad and express business of the United States a study, so as to acquire absolute mental control of all the branches of that business, as far as it could be controlled by a man.

A. I have endeavored to obtain a thorough knowledge of the express business; that is, that has been my business for a number of years.

Q. State whether, for the purpose of fully possessing yourself of all there was in the business, if you have not made various trips to New York city to study up and ascertain from the books of the express companies there just what the express business is and was.

1104 A. No, sir; not to ascertain from their books.

Q. Well, other means.

A. I have been there a good many times in consultation with managers of different express companies, and also to post myself on their ways of doing business there, and at Chicago and large cities East; but I never had access to the general books of those companies.

Q. I mean if you didn't go there to seek the sources of information [on] this subject that we are now investigating?

A. Yes, sir.

Q. You have had the practical conduct of the express business for Wells, Fargo & Co., the American Express Company, and United States Express Company, on the railroads and branches of railroads that you have named, in their express departments, and also for six years you were manager of the express department of these two railroads, together with a year and a half of superintendence of all this express business that you have now, called the Pacific Express Company?

A. Yes, sir.

Q. Were your headquarters at that time at Omaha?

A. Yes, sir.

Q. Where are your headquarters now?

A. At Omaha.

(At this point the further hearing of this case was adjourned till to-morrow morning, April 7th, at 10 a. m.)

1105 St. Louis, *April* 7, 1881.

Parties met pursuant to adjournment. The direct examination of Mr. Morsman was resumed.

By Col. Thoroughman:

I will get you to state how long the railroad company that you named on yesterday evening did its own express business as a department of its general service extended to the public; the railroad that you are connected with.

A. The Union Pacific railroad properly, that is, the old Union Pacific railroad, before the consolidation of that road, reaching from Omaha to Ogden, operated their express department for almost ten years, about nine years and a half; the Kansas Pacific and branches, the main line leading from Kansas City to Denver, operated its express department for five years, or about that.

Q. Now, are they still operating their express department?

A. No, sir; it is operated now as the Pacific Express Company, since the first of November, 1869; but I am speaking prior to that date.

Q. Now, you are acquainted with the service extended to the public by the railroad company on those lines while it was running its own express department, and you have been connected with the Pacific express ever since the railroad ceased doing its own express business, haven't you?

A. Yes, sir.

Q. So that the two conditions of public service are alike familiar in your mind, are they not?

A. Entirely so.

Q. Now, I will get you to state how was the service rendered to the public by the railroad company under its own operation as to safety, convenience, satisfaction, economy, and speed; how it served the public in comparison with the service now rendered by the Pacific Express Company.

A. Exactly the same.

1106 Q. Do you, then, mean to tell me that the public are served as safely, as conveniently, and as economically by the railroad company in its own express department as it is by the Pacific Express?

A. Yes, sir; as it was by Wells, Fargo & Co., prior to the railroad company operating its own express department.

Q. The state of the case on that line of road, if I am informed correctly, is this: That before the railroad company did its own express business Wells, Fargo & Co. had an express company through that country.

A. Yes, sir.

Q. That was laid down by them, and the express business was taken up as a department of its service?

A. Yes; that is correct.

Q. Now, you think you are able to say that the public is served as conveniently, as safely, and expeditiously by the railroad company as it was by Wells, Fargo & Co., or is now by the Pacific Express Company?

A. Yes, I know it was; for I had charge of the business under all the different managements.

Q. What is the distance from Omaha to Ogden?

A. One thousand and thirty-two miles it is called.

Q. About what is the railroad distance from Kansas City to Denver?

A. Six hundred and thirty-eight miles, if I remember correctly, but I can't say within a mile or two. The Kansas Pacific and the Union Pacific had several branch lines that were also operated under the same arrangement by the express department; for instance, the Colorado Central railroad, largely in the interest of the Union Pacific Railroad Company, was operated by the Union Pacific Railway Company's department for the Colorado Central Railroad Company.

Q. Did you name all the branches then operating under those two systems?

A. No, sir.

1107 Q. Will you do that, please; and give about as near as you can the amount of mileage covered by those lines. I don't ask you to be exact about it.

A. I wish to state that those branch roads were at times being built, and of course I can't remember the dates or anything of that kind; but there was the Denver Pacific railroad, one hundred and six miles, from Cheyenne to Denver; the Colorado Central, as completed, comprises about one hundred and seventy-five or one hundred and eighty miles; there was the Junction City & Fort Kearney, that belonged to the Kansas Pacific system—my impression is that it was about one hundred miles; and the Saline & Southwestern, forty miles, perhaps; and the Solomon Valley railroad, fifty or sixty miles; in all, in the two systems, there were about two thousand miles of railway; there is now in the Union Pacific and Kansas Pacific systems, or were at that time.

Q. Now, please drop that subject out of your mind. You meet what is known as the Central Pacific at the west end of your road, at Ogden, don't you?

A. Yes, sir.

Q. Was there any express business done from thence to the Pacific coast to San Francisco?

A. Yes, sir; the Central Pacific and all the roads west of Ogden at that time were operated by Wells, Fargo & Company's Express.

Q. You then met the business handled by Wells & Fargo on the west? That is, they did business over the Central Pacific railroad to San Francisco?

A. Yes, sir.

Q. Through what agency did they do an express business across the continent east?

A. Through us; through our express department.

Q. During the continuance of the express department of the railroad company, which was about ten years, tell the examiner the habit of business of Wells, Fargo & Co. To illustrate, a package is delivered in San Francisco to Wells, Fargo & Co., to be transmitted to the city of New York. Did they give through bills of lading for that package over your line? 1108

A. Yes, sir. All the business was not treated exactly alike, on account of the length of time between trains at Ogden; so in order to expedite business and to save delays from laying over at Ogden, on account of the shortness of the time between the arrival of the Central Pacific and the departure of our trains, all business to and from San Francisco or Sacramento and a few other prominent cities of California, New York, Boston, and similar cities in the East was billed directly through, Wells, Fargo & Co. making the bills from the Pacific slope, if I may be allowed the expression, to New York city and Boston, and the American and United States Express Company, and at one time the Adams as well, in New York, Boston, and Philadelphia, making through bills to San Francisco—through waybills—and all the companies giving through bills of lading. Those bills were carried by the party issuing them until they came to the termination of their line. Usually those from the East would be brought to Omaha and delivered to the express department of the Union Pacific railway, that carried them to Ogden and delivered them to Wells, Fargo & Co., and they completed the transportation. And if it was East-bound, of course this was reversed; and the earnings of these through bills were divided by the respective auditors of the companies on an agreed basis.

Q. What is called "prorating" in the ordinary acceptation of the term?

A. Yes; on the basis of these companies' local charges; they had their proportion of the amount of earnings on a through bill. All their business to and from smaller towns, for instance, originating in Nevada, Montana, or Idaho, and smaller towns in California, Wells, Fargo & Co. billed to Ogden, and they transferred and delivered it to us—that is, the express department of the Union Pacific railway—and we paid upon them their charges to that point, 1109 and gave them a receipt for the goods, and we would bill them to Omaha, and there we would deliver them to the United States or to the American Express Companies, whichever was the proper one, to complete the transportation; and they paid to the Union Pacific express department all the charges up to that point, and completed the transportation. But if it was West-bound, that process was simply reversed. That is the common system that prevails usually between the express companies and the railroad.

Q. Now, except the qualifications you give of the prominent towns, was not all the business done by the railroad in reference to Western-bound freight, and Eastern-bound freight also, done exactly as it is done with all other express companies?

A. Yes; I do not know that this other is any qualification. I might say the express companies in the East make through bills to points that were only reached by the Union Pacific railway express department to Denver, for instance, the object being to save delay at transfer points and the time required to rebill.

Q. Now, during the continuance of the business of the Union Pacific railroad—the express business—what character of express matter was transmitted over that line? What did you handle?

A. We handled almost everything, from large sums of gold and silver that were transported from the mining regions of the West and of California, for the Government and for individuals in the East. We transported everything that was carried by express over the country. It would be hard to enumerate what it was, but everything that goes by express.

Q. It comprises everything usually called express matter?

A. Yes.

Q. Now, state if it did not also include funds and bullion that belonged to the Government.

A. Oh, yes; very large amounts.

1110 Q. What, if anything, do you know about funds being transmitted from the land offices in the States of California, Oregon, and Nevada to Washington, or to the sub-treasury in New York?

A. I am not aware of any transfers that were made direct from the land office, but there were from the Treasury Department to and from the sub-treasuries; from the mints in San Francisco and Carson to Philadelphia and New York.

Q. Public funds were carried by your railroad express department during the continuance of the arrangements of which you have just spoken?

A. Yes; but I don't think the land offices ship any money.

Q. Of course, when you used the general expression that you carried everything usually sent by express, you meant that you extended to the public any service that was required at your hands that is usually performed by any express company, of whatever nature it might be—bonds, bills, notes, and everything of the sort?

A. Yes, sir; in making collections, commissions, merchandise, packages, large or small, horses sometimes, dead men sometimes, everything that is ordinarily and customarily sent by express, or that anybody desires to send by express, the express department was prepared to carry it.

Q. Then you say this to my question: that all the service demanded at your hands in the line of your business by the public was performed by you?

A. Yes, sir.

Q. Now, state, if you can, how the public was satisfied with that service thus rendered to them by the Union Pacific Railroad Company in its express department?

A. I never heard of any complaint by the public; there never was any litigation that grew out of it during the ten years.

Q. Now, will you tell the examiner how you succeeded as 1111 to expedition in the transaction of your business—the safety and responsibility that you gave to the public for what you did in the way of this service; I mean, did you transfer as rapidly as an express company, and was it as safely done, and was it as conveniently done?

A. Yes; in every respect as promptly; the loss and damage was settled as promptly, I may say more promptly.

Q. Now, how was it as to responsibility to the public for the matter intrusted to this express department? Just make a detailed statement of that, if you please, if you have it in your mind.

A. I don't know as I quite gather your question.

By Mr. BROADHEAD: How was it as to responsibility for losses in the transportation of express matter?

A. They were always promptly paid, and the current funds or earnings of the road were always at my disposal to meet any loss of the express department; the legal responsibility would be upon the railroad itself; we had numerous losses, and they must necessarily occur in such business; notably, at one time we had a loss of sixty thousand dollars in gold for New York, and it was paid on the day of, or the day after, it was due to arrive in New York.

Q. How were losses treated when they occurred?

A. They were treated as current expenses, except, of course, an account was kept of what portion of current expenses were losses, and what portion salaries.

Q. They were treated and paid as part of the running expenses of the company?

A. Yes, sir.

COL. THOROUGHMAN: I will get you to tell us further how such losses as you have mentioned of that gold are treated; what are they in the custom of the express business of the United States; are they treated as a matter of running expenses—those losses that occur; are they to be met promptly at once, or are they to be remitted to judicial contests to see who is responsible?

1112 A. Well, I think the custom is to pay them at once, if they consider that the claim is good.

Q. This loss occurred when the company was running its own express department?

A. Yes, sir.

Q. So that the losses occurring, such as you have named, they are to be met at once, as soon as the article finds its destination; if you have a loss on the road it is charged up at once and put on the expense account?

A. I can't say—not always paid as soon as it should reach its destination, but as soon as a reasonable length of time has elapsed to investigate, in order to ascertain that it is a loss.

Q. As soon as that fact is ascertained, that it is a loss by negligence of your own, it is charged up to expense account, and you pay it?

A. Yes, sir.

Q. Now, this is absolutely essential to be done in all express business, whether rendered by railroads or others, to carry on their business; it is not an essential thing to be done by a railroad company running its own express department, or an express company doing business, to pay these things in the manner that you have named, or otherwise their business would cease.

A. I would so consider it.

Q. It is a means of showing the public how you intend to treat it, and how you treat a matter intrusted to you; that you treat it with promptness—the payment of all losses on your part?

A. I so understand it.

Q. During the time the Union Pacific Railroad Company was running its express department was the bridge at Omaha completed, or was it running before, a part of the time before, the bridge was completed?

A. It was run both before and after the completion of the bridge; I might say after the completion of the bridge; then the
1113 Union Pacific railroad express department extended east over to the Iowa end of the bridge; we took to Omaha all the time, and before the bridge was completed; of course it began at Omaha.

Q. After the completion of the bridge it began on the east side of the river?

A. Yes, sir.

Q. How was matter transferred from the Iowa side to the Omaha, Nebraska, side before the completion of the bridge; by means of wagons and ferry-boats?

A. Yes, sir.

Q. Who did that?

A. Well, the companies that brought the goods to us—to the Union Pacific railway express department. The Union Pacific railroad and its express department ended at Omaha, on the Nebraska side.

Q. Did you take it up on the west side of the Mississippi river at Omaha?

A. Yes, sir; until the completion of the bridge.

Q. After that you changed to the east side?

A. I might say—I don't know whether it has any bearing or not—that for a time after the bridge was completed, a part of the time after the bridge was completed, the Union Pacific railway express department, for convenience, terminated at the Omaha side still, and the other lines brought their business there; that portion of the Union Pacific railway comprised by the bridge; the eastern companies came as far as Omaha until the decision of the Supreme Court, because the train was made up on the Omaha side.

Q. Now, the point I have in my mind is in regard to the performance of what has been denominated somewhere on earth, I hardly know exactly where myself, of "accessorial service." Do you know what that includes—that expression—in the performance of express duties to the public?

A. Well, to my mind, it is rather indefinite, and I would like to have you give me a definition before I answer it. However, if
1114 you ask me what I understand by it as connected with express service, I will say that as a term I have never heard it used, except in connection with this suit, to my knowledge. I understand the term "accessorial services," as connected with express business, the service that is rendered between railroad depots and the offices for the individuals of the public, when served by wagons. That is what I understand it to mean.

Q. Now, I will get you to state if the performance of this accessorial service, as you understand what it is, is not the very marrow of express business as performed by the express companies; that is to say, that if they don't do that—if they don't go out and gather up these things and distribute them to the places of their destination, whether they would have any business; in other words, whether it is not a very essential element constituting their business?

(Objected to, as suggesting the answer desired.)

A. Well, that question is pretty comprehensive; my judgment is that accessorial services, as I have defined it, performed by express companies, is only performed at the larger towns where we think it will increase business by so performing it; that they will gain enough more business to pay for the expense. I think it is safe to say that at least nine out of ten of the towns in the United States where there are express offices no accessorial service is performed whatever, as I have defined it; but in the large towns the rule is to perform this kind of service, because it increases the traffic, and people will give us business in consideration of free drayage that they would not send by express otherwise; and that by performing the drayage ourselves—the express companies performing it—they are enabled to deliver the goods more promptly to the consignee, or to take goods at a later hour from the shipper, under their own management, than they would be if the numerous shippers in a
1115 city like St. Louis were to come to our office themselves. We

could not receive the freight at so late an hour—at an hour so near the departure of the trains, if such were the case, and that is an argument for doing this business. The only reason for doing it is that it will increase business, and out of the increased business the company gets its pay.

Q. And it is also a means of advertisement, is it not?

A. Largely; it is the only advertising that the express companies do.

Q. You say that in the unimportant towns they don't perform that kind of service?

A. No, sir; at least nine out of ten towns in the United States they do not perform such service at all; but whenever a town is of such size as to justify, the rule is to mentally figure to see whether the nature of the business will increase enough to warrant the express company putting in a wagon at this or that place of their own. To make myself entirely clear, I will say it is a matter of increasing the business entirely, so far as my experience with express companies go, whether or no they will perform this service; because in at least ninety out of one hundred stations they do not perform such service.

Q. Now, in your entire experience in connection with this express business, have you ever known of a charge being made against an individual member of the public for any such service being performed as you have denominated accessorial service?

(Objected to, as leading.)

A. No, sir.

Q. Do the railroad companies in transacting their express business, or the express companies in transacting their express business, make any additional charge to members of the public for thus performing the services you have denominated accessorial services?

A. No, sir.

1116 They perform it for the public for nothing?

A. Yes, sir.

Q. The pay being based, as they calculate, upon the increase of their business; that is where they get their compensation for the services?

A. Yes, sir; the charge is the same whether or no any delivery is made. For instance, if the Adams Express Company received a package in New York city—for instance, the Adams Express Company go to the Astor House in New York city and take a package and bring it to my address, Lindell Hotel, the charge is exactly the same as if the original custodian of that package had delivered it to the Adams Express Company at their depot in New York, and I had taken it at the depot in St. Louis; that is what I mean; the custom is the same, the charge is the same for transportation, without regard to delivery.

Q. That in the item of transportation, the manner of the thing getting to the line of the railroad and getting from it does not enter into the calculation at all?

A. There is no charge for that; it does not charge for that.

For instance, all the business the Pacific Express Company brings to St. Louis, and gathers up at its numerous offices, destined east of here to some point reached by the Adams, the American, or the United States Express Companies, the Pacific Express Company delivers to these companies, who complete the transportation at their office, and the charge is the same on every hundred pounds of freight that these express companies would charge an individual in St. Louis, if they had gone to the store of the individual to get the package; there is no distinction between the custom of the express company as to the price for carrying an article between towns, whether it is brought to them by the shipper and taken away by the consignee, or whether they take it from the shippers themselves at their places of business and deliver it to the consignee's place of business.

1117 Q. Can you tell, then, what would be the rate that should be allowed in fairness and in justice for this accessorial service, of the getting of the package and bringing it to the cars, and taking it away from the cars at its destination and delivering it to the consignee? To explain, I listened to this extraordinary testimony not long since, and the point in my mind is this—and I have to tell it different from anybody else, because I am not very graceful in speech—that it was worth sixty per cent. on the one hundred to go out and get that package, bring it the railroad, and deliver it at its place of destination to the consigneee; in other words, that it is worth forty cents to the railroad company to carry it whatever distance it may go, and sixty cents to the fellow that goes and gets it and carries it to the consignee; do you understand me?

A. Let me ask a question, and see if I understand what you mean; do you mean to ask if a dollar is earned for transportation, that forty cents of that dollar—only forty—goes to the railroad, and that sixty cents of that dollar is the cost of doing the business outside of the simple hauling of it?

Q. That is the thing exactly.

(Counsel for the complainant objects to this question, as being composed of a speech, and interrogatory, and explanation, and a question, and as being of entirely too composite nature, and as leading and suggestive.)

Q. Now, answer the question in your own way.

A. Well, in the usual course of the express business it don't cost sixty cents on the dollar to do this.

Q. Does it cost anything; just give your own answer and explanation of it?

A. It costs, of course; I don't know as I get your question fairly in my mind.

1118 Q. I wish to know what it is worth, in your opinion as an express man, what it is worth, supposing a package be brought from Cincinnati to St. Louis at the cost of a dollar; that the express company take it to the railroad, and when it gets to the depot in St. Louis the express company delivers it to the consignee; now what portion of that dollar should go——

Witness: Collecting the dollar from the consignee?

Counsel: Collecting the dollar from the consignee. Now, what portion of that dollar should belong to the railroad, and what portion should go for accessorial services?

A. Well, I can't say what should go to the railroad company; that would be a matter of contract.

Mr. **Breckinridge**: He is asking you for a fair division of a case where he supposes the consignee pays a dollar.

Mr. **Thoroughman**: Answer that, and I will get at it in another form.

A. Well, I cannot say what would be a fair portion of the money to go to the railroad company, but on the general average of express business, it would cost the express company in the neighborhood of 21 or 22 cents to obtain this business.

Mr. **Breckinridge**: That is accessorial.

A. I mean of the general expenses of the express company, being apportioned on the earnings, would probably be about 21 or 22 per cent. of its gross earnings, the entire expenses.

Q. Now, upon what basis of calculation does the express company expect to get their pay for that; is it not in the fact of their advertising and getting business for that 22 per cent.?

A. This 22 per cent. I mentioned includes the entire expenses of the express company. I have not said that officers, superintendent, and stationery, and all that kind of expense, were advertising.

1119 **Counsel**: No, I did not so understand you. We do not think that is accessorial service, and I reckon nobody seriously thinks so.

Witness: As I understand accessorial service, there would not be five per cent. of it; in other words, that of the earnings of an express company, that portion paid for all the expenses I have called accessorial will not amount to over five per cent.; I don't think they will, that is, of their gross earnings.

Q. Now, then, Col. Morsman, how is that five per cent. satisfied; how is it paid; is it paid by the allowance out of the same earnings, or is it calculated by the express company that they will get their pay by the extension of their business?

A. Well, it is paid as other expenses, and called general expenses.

Q. Now, right in that connection I wish to ask you a few questions in regard to this accessorial service; whether the agents and safes, and messengers and office rent, horses, wagons, taxes and insurance, and all those things, you regard them as not forming a part of what is called accessorial service, as I understand, do you?

A. Well, as I understand accessorial service, wagons, horses, and drivers, that is, the natural wear of the wagons and the horses, which wear out in time, the expense of keeping these horses, salaries paid to drivers, repairs of wagons, and to keep them up, and to keep the stock good, I call that the accessorial service; that is what I understand to be accessorial service.

Q. How is it about the stationery, insurance, taxes, and about the rent of offices?

A. I call those general expenses.

Q. You have been connected with railroads as well as in their express business, have you not?

A. Not except in connection with their express departments.

1120 Q. Do you know anything about the earnings of railroads in the East and West—the comparative earnings; the thing I wish to establish by you is this——

(Counsel for the plaintiff objects as leading, unless it is shown that the witness has such knowledge of the railroad business as would qualify him to testify as an expert.)

Q. Well, I will ask the question, and you can object to it. I will get you to state whether a railroad can afford to carry freight as cheaply in a sparsely settled country as in one that is located in a densely populated country per mile per ton.

(Objected to, on the ground that it is leading, and suggestive partly, and because the witness has not shown that he has any familiarity with railroad matters, and that it is a question for experts.)

A. I should say not, sir; that where the volume of business was less, they could not afford to do it as cheaply as where it was greater.

Q. Have you sufficient railroad experience to answer that question to your own satisfaction?

A. Yes, sir.

Mr. **Breckinridge**: If Mr. Morsman is to be examined as a railroad expert, he should be shown to be a railroad expert, by a preliminary question or two; anybody might be able to answer one question, and further along he would not be.

Q. Suppose a railroad in the State of New York can make it profitable to carry a ton of freight a given distance, for a given sum; does that to your mind furnish any criterion as to what the Iron Mountain railroad could afford to carry the same ton of freight for any given number of miles?

A. No, sir.

Q. Is it any just criterion by which you can ascertain the fact?

A. No, sir; I should say not.

1121 Q. Then the country through which the railroad runs, its commerce and travel, must be looked to, to ascertain how it can afford to do its business, rather than a comparison with other railroads in other States of the United States; is not that so?

A. I think so.

Q. Another element that would enter into that would be the grade, wouldn't it?

A. Undoubtedly.

Q. I will get you to state if you, from your experience, both as agent and manager of railroad express departments, and as an independent operator or manager of an express company, whether you know any reason why a railroad company, through a department of its business, could not as well serve the public in all matters appertaining to the express business as an independent express company could do it, with the same dispatch, convenience, and safety to the public.

(Objected to.)

A. There is no reason, sir, why they could not do it just exactly as well, except it was a short railroad, whose terminal connections were such that there would not be time intervening for a transfer between that and its connecting roads.

Q. Would that follow; could not a railroad company do its own express business on a short line as well as any other express company could do that business on the same short line?

A. They would do it as well, but in the matter of profit they could not.

Q. But I am talking about the safety and convenience to the public.

A. Oh, yes; they could do it just as well.

Q. Now, I wish to get you to state in this connection, to name generally what is understood by expressmen when they use the term "express freight." I would like to get you to give a general outline of what that is in your own language, if you please.

1122 A. When we use the term "express freight," we mean everything that is transported by express, except what we call "money business." We call small parcels freight, as contradistinguished to money, and we call packages of money collections, and usually valuable packages we term them "money business;" that is customary in the business; when among ourselves, and we speak of freight, we mean merchandise of all kinds, big or little.

Q. That is usually sent by express?

A. Yes, sir; and that comprises everything in the world, almost.

Q. Now, in making your tariffs in reference to freight matters, all matters carried by express companies and the express departments of railroads, tell us whether the value of the thing to be transported is one of the elements considered in making a tariff of charges for the thing.

A. Yes, sir.

Q. I will also get you to explain this: Suppose a package of any given weight was to be sent from here to Galveston, in Texas; suppose it was sent from the department of the defendant in this case, the Iron Mountain Railroad Company; would the Iron Mountain railroad get as much out of that package for the transportation of it and the care of it from here to Galveston as it would if it was only carried to Texarkana, the terminus of its road, or would there be a rebate in favor of the other company with whom it exchanged service?

A. I am not so conversant with matters between the Iron Mountain railroad as others, but the rule would be between express companies, generally, if a package was of less weight than fifty pounds, particularly if less weight than seven pounds, in that case the com-

pany would not get as much for the transportation of it where it had to go over two companies as if it carried it entirely within itself; in other words, if we took a package that weighs a pound, say,
1123 from Mexico, Missouri, to go to New York city, and brought it to St. Louis, we would only get 12 cents for it, and 13 cents would go to the company that carried it to New York; while for the package that started from Mexico, Missouri, and was coming to St. Louis proper, we would get 25 cents; the aggregate charge would have been the same; but in the case of the short haul, we would do all of it, and in the other case divide with the company completing the transportation. These rates on small packages are make to compete with the postal department, which takes a package in the mail for the same price. We carry a package, for instance a pound, we will say, to San Francisco for 25 cents, out of which the Pacific Express Company would get eight cents. We carry that same package, if it originates in St. Louis, and is destined to Mexico, Missouri, for 25 cents, on the rule that obtains between express companies up to seven pounds; above that the rates are classified for transportation, and on the rate above 100 pounds each one charges his own.

Q. Now, if I understand you accurately, all the express companies in this country have one tariff for their local business?

A. I do not say all, but the rule; the rule of express companies is to that effect. I don't know so much about the Southern or Iron Mountain, but all the express companies I have had dealings with, United States, the American, Wells, Fargo & Co., to the same extent, although it is not long in existence with them; but the greater portion of the country this is the rule that obtains.

Q. With the greater portion of the country, and with that with which you are acquainted, express companies have a local tariff, a local rate, and they have also a different rate where the matter is to be carried over more than their line?

(Objected to.)

A. Yes. On small packages of freight and small packages of money as well.

1124 Q. To get the thing clear in the record, I wish to get this in your mind, and you may answer it, please: Suppose, according now to what usage you are acquainted with, if a package was carried from St. Louis to Galveston over the Iron Mountain Railroad Company, the Iron Mountain Railroad Company's express department would likely, according to your usage, share with somebody else, would it not, in this service rendered and money earned?

A. Yes, for the class of packages I mention.

Q. Whereas, if Mr. Shepley was to send a package from St. Louis to Texarkana, nobody else being called on to perform any service concerning that package, the Iron Mountain Railroad Company, getting it all, would get a little higher rate for carrying it, wouldn't they?

A. Yes, sir; in some instances almost double.

Q. Now, what would be the proper charge and the proper mode of transacting business, according to the custom and usage of which you have spoken, if Mr. Shepley were to send a package over the express department of the Iron Mountain Railroad Company, destined to Galveston, sending his own messenger with it, and only way-billing it from here to Texarkana, and then transporting it himself; would, according to the custom, he be charged the local rate on the package, or would he be charged the commutation rate, as if he was going to Texas, where he billed only to Texas?

A. He would be charged the local rate, if only asked to carry from St. Louis to Texarkana; that would complete the contract.

Q. So he would have, according to the custom of the express companies, to pay the local charge on that?

A. Yes, sir.

Q. Then, if the Southern Express Company were to do this business in like manner as in the case illustrated by the name of Mr. Shepley's package, they would have, according to the custom of express companies, to pay the local charges also?

1125 A. You mean if the Southern Express Company should deliver a package to the Iron Mountain Railroad Company, and ask them to carry that to Texarkana?

Counsel: Yes.

Witness: Yes, sir.

Q. They would have to pay the local rate?

A. Yes, sir.

Q. Although they might design to take it further; that is a matter that could not concern the local carrier?

A. No, sir; I think not.

Q. You say, Col. Morsman, that the Adams Express Company, Wells, Fargo & Co., the American, and those companies with whom you have done business, that that was their custom, to make such charges?

(Objected to.)

Witness: You say "that;" what do you mean?

Counsel: I mean in such case as I have given you, where the thing was given to the company simply to be carried over their line, that they always charged the local rate for carrying it, notwithstanding the owner might intend it should go further?

A. If it was consigned to be delivered at a certain point, the regular charge to that point would be made.

Q. And if that was the local charge, it would apply to that article?

A. Yes, sir.

Q. If you know of any other railroads than those you have named, any Eastern roads that have been and are doing their express business, you may name them, if you please, and how long they have been doing it.

A. Well, the Philadelphia & Reading Railroad Company has its own express department, which has been in existence a long while; I cannot say how long, but more than ten years. The Dela-
1126 ware, Lackawanna & Western has had their own express de-

partment for several years, and the Baltimore & Ohio railroad, and the Ohio & Mississippi, and the Marietta & Cincinnati.

Mr. **Breckinridge**: Do you speak of your own knowledge?

Witness: Yes, the Baltimore & Ohio, the Marietta & Cincinnati, and the Ohio & Mississippi have had an express department, I think, about two years; I do not remember just when they started.

Mr. **Shepley**: We could not tell what the "two yeaas" applied to; whether to the Baltimore & Ohio or simply the Ohio & Mississippi.

Witness: The Baltimore & Ohio, the Ohio & Mississippi, and the Cincinnati & Marietta; the "two years" apply to those three.

Q. What is the fact, if you know anything about it, in regard to the Denver & Rio Grande Railroad Company, as to whether that has its own express department?

A. You asked me to name all I knew, and I had not got through when I was interrupted. The Denver & Rio Grande railway has been operating its express department from the first; commenced about five or six years ago, and operated their express for two or three years, as I remember, and it has again commenced something about two years ago, and they are now operating their own express department.

Q. Name any other road.

A. Well, I don't suppose you want me to name the Iron Mountain?

Counsel: No; we have that named in the bill.

A. Well, I don't call to mind any other now than what have been named by me.

1127 Q. Do you know anything about the public sentiment or satisfaction with which the public regards these railroads that you have named as doing their own express business; how they satisfy the public; do you know, or have you heard of any satisfaction?

(Objected to, as incompetent, and as throwing no light on the issue.)

A. Well, I don't know of any dissatisfaction.

Q. Now, Col. Morsman, I will get you to state whether the service rendered to the public under this system of these roads doing their own express business has been less to the public—the expense of it—whether that has to the public, or greater, if you know; whether the public has not really been served for less money as safely, expeditiously, and conveniently by railroads in running their express departments, more so than they were when express companies ran over these lines.

(Objected to.)

A. May I ask if you mean by that whether the rates charged have been more or less by the express departments of the roads than by express companies who operated those roads before?

Q. That is it exactly; you are a better lawyer than I am.

A. As far as I know.

(Objected to, as incompetent.)

Q. Don't you know that the rates generally have been reduced to the public after the organization of these express departments by railroad companies; are they not less to the public?

A. That is true of all railroads of which I have personal knowledge; I have mentioned some roads I have no knowledge of as to their comparative rates charged by railroad express departments, and by express companies that formerly occupied them.

Q. And of those you have knowledge of you know it is less than it was by express companies?

A. Yes, sir.

1128 Q. You may state now what roads you have knowledge of.

A. Well, I have knowledge of the Union Pacific railway, Kansas Pacific railway, that I mentioned before, and also the Denver & Rio Grande Railway Company; I have some knowledge as to the Iron Mountain railroad express department, and I have knowledge also of comparative rates now on the Ohio & Mississippi, and on the Baltimore & Ohio, and what they were prior to the organization of these express departments; but I have not knowledge as to the other roads I have named—the Philadelphia & Reading, Delaware, Lackawanna & Western—as they have been operating an express department so long I don't remember what the rates were before.

Q. In the cases you have named of railroads you have knowledge of, you say that the public is served safely, conveniently, expeditiously, and for less money than it was served by the express companies?

A. Yes; those that I have knowledge of.

By J. O. **Broadhead**: The Pacific Express Company has an office in the city of St. Louis, has it not?

A. Yes, sir.

Q. A building in which it transacts its business, receives packages, and transmits them to the railroad for transportation?

A. Yes, sir; we have two offices in St. Louis, one on Fifth street, and one near the depot.

Q. You have wagons and horses for transportation?

A. Yes, sir.

Q. In other words, you perform what you call accessorial service for the Pacific Express Company?

A. Yes, sir.

Q. I wish to ask you something about the convenience arising from what you call accessorial service; do you, in collecting packages from shippers in St. Louis, transfer all your packages to your offices in the city, or do you take many of them directly to the railroad company's office for transportation, in wagons?

1129 A. Well, we do not take any to the railroad office; but all the business that our wagons gather up in St. Louis, except it is money, or very small parcels, the wagons do not take to the Fifth street office at all, but to our office down near the depot, to be billed and handled from there to the cars. I believe that is the custom with all express companies here, that they do not take but a very small portion of the goods and merchandise business into their offices at all, up town, and would not have room to do it.

Q. Do you load express matter from your office down near the depot, directly on the cars, from that office?

A. No, sir; our depot is not quite near enough for that, and we are not able to do that; but we have to haul it by wagons again.

Q. Haul it from there by wagons again to the cars?

A. Direct to the cars; yes, sir.

Q. You say you wouldn't have room enough in your office on Fifth street to deposit all the packages you wish to send by rail?

A. Oh, no, sir; not nearly; we could not afford to rent such high-priced property to make room enough for that volume of business.

Q. But all packages you receive are either taken to the office on Fifth street or taken to the office near to the railroad depot?

A. Yes, sir.

Q. And then they are arranged and taken to the railroad depot and put on the cars?

A. Yes, sir; taken to the railroad direct, from what we term the depot office, near the depot, to the proper train that they should go on.

Q. Now, I wish you to explain, if you can, the advantages to the express company in collecting those packages from shippers for shipment upon the railroad, rather than to have shippers send them themselves to your office for transportation.

1130 A. Well, the advantage mainly consists in not having so many personal applications to the office by customers coming directly there, and also if all this business was brought into our office in the city by shippers directly we would have to have room to handle it, which would very greatly increase our rent, making the increase of rent very large.

Q. So that this accessorial service in a company doing a large business really reduces the cost of transportation to the company, does it not?

A. I don't know that it reduces it any, but I think that the expense incurred in the horses and wagons would be nearly, if not quite, counterbalanced by the increased rent and clerical force which would be required if each and every individual of the public brought his packages to the express company's office to be handled.

Q. Is not that an advantage in having a wagon-load of express matter brought to the office, so that your own officers can arrange it for transportation, rather than to have them come in separate parcels from shippers?

A. Oh, yes; that is, the same number of men will handle it more expeditiously.

Q. Handle it with less house room or office rent?

A. Yes, sir; and we are enabled to handle it at less expensive offices, as to rent.

Q. If, for example, you receive at either one of your offices a wagon-load of express matter for transportation, consisting in large measure of small parcels, is it better or not to have those parcels come together, so that the agents of the company can arrange them in the separate packages, rather than to have them brought in from eight o'clock in the morning to six o'clock in the evening by shippers, from time to time; is not the one method an advantage over the other mode of handling express matter?

A. I think it is an advantage to have it gathered up and brought
to the office, or the place where the goods are to be handled
1131 by the express company's own wagons, rather than by individuals making up numerous shipments.

Q. Well, does that advantage overcome the cost of the employment of wagons and horses and drivers, in bringing express matter to the office of the company, or how does it compare with that expense; how does that advantage compare with the expense of bringing those articles to the office in the way I have spoken of?

(Objected to, as leading.)

A. I don't think that advantage, perhaps, as mentioned, is enough to cover that expense, but that the business—that the advantage to the shippers, in saving them drayage, induces them to ship more by express, so that the express company derives a greater revenue than they would if they didn't do this.

Q. So that the volume of express business is increased by that mode of doing business?

A. Very largely; no question about that.

Q. And of course, the more business you do the less you can do it for; that is the general proposition, is it not?

A. Yes, that is true.

Q. The charges to the public then, are by that mode of getting business to the office, reduced, are they not?

A. They are not increased, sir; the charges are the same; as I said before, whether that service is performed or not—that is the universal custom, as far as I know, of all express companies.

Q. I understand you, in regard to the specific articles of transportation, you do not add anything to the cost of transportation by reason of that service, but in your general tariff of charges, an increase of business resulting from that mode of doing it enables you to reduce the general cost of transportation to the public, does it
not?

1132 A. Yes, sir; or to make more money; that is what enables
them to make a reduction in rents would be a revenue.

Q. In case of competition you would be able to make a reduction to the public?

A. Yes, sir.

Mr. **Breckinridge**: You wouldn't do it unless there was competition, I suppose?

A. We have often done it without competition, with a view to increase the volume of business.

Q. With a view to selfish advantage?

A. Yes, sir; I think all acts of corporations are with a view to selfish advantage.

Mr. **Broadhead**: You say you have been engaged in the railroad business as well as the express business?

A. No; I said I had not been in the employ of railroad companies except as connected with the express business; never in any other capacity.

Q. In your knowledge of the express business as done by railroad companies, where they have separate express departments, have you ever found any difficulty in making rates and agreements for forwarding the transportation of goods beyond the line of the railroad?

A. No, sir; none at all.

Q. In other words, you have had the same facilities for transporting goods beyond the line of roads as express companies proper—the American or United States, for example—had in transporting goods over different lines of railroad?

A. Exactly the same; that is, if I gather aright your question, that the express departments of railroad companies have had no difficulty whatever in having their matter forwarded beyond the line of the railroad companies themselves.

Counsel: Yes.

A. Just the same facilities that other express companies had.

(At this point a recess was taken until half past 2 o'clock p. m.)

1133 After recess the examination of the witness was resumed, as follows:

By Mr. **Thoroughman**: You spoke, in your evidence before dinner, of the Union Pacific Railroad Company carrying Government moneys from the Pacific coast to the East, and from the East to the West, as I understood you; can you give the amount thus transported by the railroad company during any year—the approximate amount?

A. Directly for the Government, on Government account?

Counsel: Yes. How many million dollars?

A. Well, I cannot tell now, from my memory, very nearly, but as high as ten or twelve millions or more in a year.

Mr. **Shepley**: Bullion?

A. No, sir; money, coin, and currency; I think that at times there were some silver bars also, but I speak now more of coin—money.

Mr. **Thoroughman**: That is what I address my question to, as to coin, money, and securities of the Government.

A. Coin, money, and paper; yes, sir.

Q. There was paper money and coin also, was there—perhaps bullion as well?

A. Yes, sir; I might say the greater part was hard money, coin, gold or silver.

Q. Do you know anything about the Government using the express department of that railroad company in transmitting money in support of the territorial government of Montana; and, if so, you may state that also.

A. Very frequently we had money from the Treasury Department going to the officers, the general officers, of the Government, or to the designated depository of Montana—quite a large amount—$40,000 or $50,000 at a time, and this by a direct contract as
1134 to the rate, made by myself, as representing the Union Pacific express department, with the agents of the Government of the Treasury Department.

Mr. **Shepley**: A special contract?

A. Yes, sir.

Mr. **Thoroughman**: State if the Government used the means you had for transporting money to its troops at Fort Ellis, and different points in the Western country?

A. Yes, sir; all the different forts on the line of the Union Pacific, or tributary thereto.

Q. I believe, under the law of Congress, the Territories are permitted to take from the public treasury $50,000 a year during their territorial condition; during all that time, as far as your knowledge extends, that money was transmitted by the means we have spoken of to Montana Territory, was it not?

A. Yes, sir; all money for the Government was transported by the Union Pacific railway express department during the period I speak of, except what may have gone by mail; all that went by any express went by the express department of the Union Pacific Railway Company.

Mr. **Breckinridge**: Yours was the onlye xpress?

A. Yes, sir.

Q. What you mean to guard against is, the Government may not have sent all its money by express?

A. Yes, sir.

By Mr. **Thoroughman**: I wish to read to you a few sentences from a deposition taken by the plaintiff in this case from the testimony of Mr. Babcock; these questions are propounded to him on p. 85:

"Q. Is the Adams Express Company employed by the Government of the United States, or any department thereof, for the transporting of Government money or securities?

"A. We are by the Treasury Department.

1135 "Q. Can you state what amount of money the Adams Express Company has carried during one year for the Government, or money and securities?

"A. In 1878 we carried one thousand two hundred millions; in 1879, six hundred and sixty-one millions of dollars.

"Q. Is the Adams Express Company still now employed by the Government in the transportation of money and securities?

"A. It is.

"Q. Has the Government, or the Treasury Department of the Government, ever notified the public in any way; and, if so, how the public could use the Adams Express Company as its vehicle for transportation between itself and the Government?

"A. They have done so by circulars, issued by the Treasury of the United States.

"Q. Will you please produce and annex to your deposition the notices and such circulars as you have referred to?

"A. Yes, sir; I herewith produce the same, and they are marked October 1, 1866, etc., amounting to ten in number."

Q. By these circulars it appears that they extend only West to the Missouri river, and no further West than the Missouri river; that is to say, the Government notifies the public by these circulars that the public has the right to use that express company as a vehicle to transmit money to the Government, and it would be recognized as official; what was done with the public money during the existence of these circulars, from 1866 down to the present; what was done with the public money west of that; I mean was it carried as you have stated?

A. Do you mean moneys that were brought under this contract—the circulars you have referred to as far as the Missouri river?

COUNSEL: Yes.

1136 A. Those that were carried from the Missouri river westward by the Union Pacific Railway Company's express department, if not destined further than Ogden, of course were carried by them entirely; if destined to points beyond Ogden, then the Union Pacific Railway Company express department delivered them to Wells, Fargo & Co. to complete the further transportation.

Q. Do you know the territorial extent to which those circulars purport to go?

A. Well, I cannot remember just exactly, only as to that country in which I was more intimately associated; the contract with the Adams Express Company, I understand, extended to the Missouri river; that there was a limit to it in the Southwest; I think Texas was excluded from it; I am not certain as to that.

Q. Now, during the time that these circulars purported to give force and effect to what the people might do in reference to the transmission of money, and of the business pertaining to the Government and its money—it was done, as you have described, west of the Missouri river just the same as though these circulars had no existence, was it not?

A. Yes, sir.

Q. The transmission of currency from the Pacific coast to Washington was carried on then as now, was it not?

A. Yes, sir.

Q. Now, how far West, at that time, was this Adams Express Company running, do you know, say in 1866?

A. On that latitude they ran as far West as Chicago, and to St. Louis; that was the extreme western limit of the Adams Express

Company's routes at that time; north on a line east and west through St. Louis; now, they might have had something below here——

COUNSEL: I don't care about that.

1137 Q. Now, the western terminus of the Adams Express Company, as you understood it, in 1866, was Chicago and St. Louis?

A. Yes, sir.

Q. Now, by what means, prior to 1867, in December, when the railroad was finished——

WITNESS: It was not finished until 1869.

COUNSEL: It was finished in December, 1867, as far as Ogden—just before December, 1867, was it not?

A. The roads were completed and a junction was formed in the spring of 1869, as far West on the Union Pacific railway as Corinne, in 1868, were they not?

Q. The trains were running?

A. Yes, sir.

Q. Do you remember the time when Hon. Isaac N. Morris and two inspectors were there?

A. Yes, sir; they were there very frequently.

Q. What I am trying to get at is, as soon as that railroad was finished the express business began to follow everywhere with it, didn't it; nearly as soon?

A. Yes; not the express department of the railroad, at this time, but the express business.

Q. Before that across the plains, where the Government used any means of transportation, it had been Wells, Fargo & Co. and Halliday's stage lines?

A. Yes, sir.

Q. Now, after the completion of this railroad, how long was it before the western terminus of the Adams Express Company was fixed as far West as the Missouri river?

A. It has never been as far West as the Missouri river, on this latitude I speak of, until within a few months; well, I think I might say within sixty days.

Q. Now, here is the point I have been trying to get at all the time: before the moving West of the terminus of the Adams Express Company, to where it now is, what was their mode of doing business in reference to transmitting, say the express freight and
1138 Government money to the Pacific coast; did they give their
New York bills clear through?

A. You mean making way-bills clear through?

Q. Yes.

A. No.

Q. To where did they go?

A. Government money originating at Washington, if it was going to the Pacific coast, they brought as far west as Chicago or St. Louis; at that point they transferred either to the United States or American Express Companies, who completed the transportation to Omaha; I am talking now of the time after the road was completed; they brought it either to the United States or American Express Companies, those being the only companies, and one or the other of them brought this money to Omaha, and at Omaha they transferred it to Wells, Fargo & Co., during the time of their life in that country, who completed the transportation; and after the Union Pacific railway express department was started there these moneys were delivered to the Union Pacific railway express department by either the United States or American Express Companies; and the Adams Express Company never did have any line or office at Kansas City or Omaha, either of the eastern termini of the Union Pacific railway system, until within the last sixty days.

Q. Then the Adams Express Company never conformed to these circulars at all, in so far as it was necessary for them to carry money from Chicago to Omaha or St. Louis to Omaha; that they transmitted by other hands than their own?

A. Yes, sir; always carried by other hands.

Q. Now state one thing that I omitted in reference to C. O. D. packages; what was done with those, or did you have any of them on the Union Pacific railway when it was running that express department?

A. We had a great many packages on which sums of money were to be collected on delivery and the money to be returned to the shipper.

1139 Q. Did you do that?

A. Yes, sir.

Q. Did you perform it, as far as you know, to the satisfaction of the public?

A. Yes, sir.

(By consent the further examination of this witness was adjourned until May 5th, 1881.)

St. Louis, *May* 5, 1881.

Parties met pursuant to adjournment, and Mr. Morsman was cross-examined by Mr. Shepley as follows:

Q. You stated that you were general superintendent of the Pacific Express Company?

A. Yes, sir.

Q. And that you had been so from the organization of the company?

A. Yes, sir.

Q. You also stated that you had previously been the general manager of the express department of the Union Pacific railway previous to your taking charge of the Pacific Express Company?

A. Yes, sir; if you want it technically correct as to the title I will state that I was general superintendent of the express department of the Union Pacific; and as to the Pacific Express Company, my title was general manager.

Q. Was the express department of the Union Pacific Railway

Company managed to the satisfaction of the company during that period?

A. Yes, sir; so far as I know.

Q. Will you, then, explain to me why the change was made from an express department on the Union Pacific railway to the making
of a contract with the Pacific Express Company for doing the
1140 express business, and the change that necessarily resulted
from that arrangement?

(Objected to.)

A. I don't know that I testified to any contract with the Pacific Express Company. In the first place, I object to this, because I do not see what the Pacific Express Company has to do with the case; but if I am to answer, I will do so. The reason for changing the express department of the Union Pacific railway and the Kansas Pacific railroad, and other railroads that were at that time operated under different organizations, was to avoid keeping up so many names, and also to give it a legal status outside of where the Union Pacific had any right to do business. Before the Pacific Express Company was organized, the Union Pacific and Kansas Pacific extended their express over the then St. Louis, Kansas City & Northern—then called the St. Louis, Kansas City & Northern—and called it the Union Pacific & Kansas City express. The question came up as to the liability, and the legality, even, of the railway companies doing business beyond where their charters extended over the roads, and hence the organization of the Pacific Express Company.

Q. Was not the Pacific Express Company organized and doing business prior to the time of any consolidation between the Union Pacific and the Kansas Pacific?

A. No, sir.

Q. Are you certain about that?

A. Well, now, I am not so certain as to the date that consolidation went into effect. The Pacific Express was organized and commenced business on the first of November, 1879. Now, the other matter is a matter of memory somewhat with me; my recollection is, the consolidation of the Kansas Pacific and Union Pacific roads went into effect about the same time; I would not be positive as to
a month or two.

1141 Q. Do you think you can be as much mistaken in the
matter if, in point of fact, the consolidation did not take
place until 1880?

A. To what time in 1880?

Q. Well, I think it was in May, that is my recollection about it.

A. Well, I will not say as to that, when the consolidation did take effect; but the Pacific Express Company commenced on the first of November, 1879.

Q. If, in point of fact, the consolidation did not take place then, what reason was there for a change upon the Union Pacific, from the organization that it had had for nine and a half years to a separate arrangement in regard to its carrying express matter over its road?

A. The express department of both these roads had been operating under one management for some time prior to the organization of the Pacific Express Company.

Q. Explain how it was that the express department of the two roads were carried on under one organization prior to the time of their consolidation?

A. Well, they were carried on under one management. There was no different organization from the railway company, the earnings of which were kept separate, and the expenses of which were kept separate; the earnings were remitted to the cashiers of the roads on that basis, of each road paying its own expenses, and receiving its own earnings.

Q. Then, according to that, the express earnings of the Kansas Pacific and Union Pacific were pooled, and were carried on under one management for some time prior to the consolidation of these roads?

A. The management was the same, sir. The earnings were not pooled; each road had its own earnings, what it earned; each paying its own expenses, and the expenses were charged up to each. I may state, that for a good while, I don't remember the dates when
all these things were changed exactly, but for some years,
1142 the Kansas Pacific express was all under my management,
and I was also manager of the Union Pacific express department. The accounts of the Kansas Pacific were kept in the general office of the Union Pacific at Kansas City, and the accounts of the Union Pacific at Omaha; and there was no intermingling of the business whatever, except that I was superintendent of both. Then, for perhaps a year prior to the first of November, 1879, for economy's sake and convenience, the accounts were all kept at Omaha for both these roads, as far as the express department was concerned.

Q. If, in point of fact, there was a change made from an express department to the charge of a separate organization, under the name of the Pacific Express Company, for something like a year prior to the consolidation, can you give no other reason than you have given for such action?

A. No, sir; it is not a fact; there is no other reason to give if it was a fact; but I am certain you are mistaken as to the date of that.

Q. Well, what is the date, according to your belief?

A. As to when the consolidation took effect?

Q. Yes; You have stated that in November, 1879, the Pacific Express Company was formed.

A. Yes, sir; I stated the reasons, and there is no other reason known to me.

Q. Is the Pacific Express Company a corporation?

A. Yes, sir; under the general laws of the State of Nebraska—general incorporation laws.

Q. Who are its incorporators; are they railroad managers, or any of them?

A. Well, my recollection is that the incorporators were—the original incorporators—myself, J. W. Gannett, and A. J. Poppleton; I am not certain, but I think there were only three original incorporators; I think that is what the law is.

1143 Q. At that time you were general superintendent of the express department of the Union Pacific?

A. Yes, sir.

Q. And Mr. Poppleton was the attorney of the Union Pacific?

A. Yes, sir.

Q. And Mr. Gannett was general freight agent?

A. He was the auditor of the Union Pacific.

Q. It is your recollection that they were the only incorporators?

A. Yes, sir; the original incorporators; there might have been more, but my impression is that is all.

Q. According to your best knowledge, Mr. Morsman, are any of the railways over which the Pacific Express Company does business incorporators of that company?

(Objected to, as irrelevant and incompetent.)

A. No, sir; I don't understand that they could be.

Q. Who are the present officers of the company?

(Objected to, as incompetent and irrelevant.)

A. Mr. T. L. Kimball, of Omaha, is president; Mr. A. L. Hopkins, of New York is vice-president; Mr. J. W. Gannett is secretary and treasurer. Do you want the board of directors?

Q. Yes, sir.

A. These three were also directors, and in addition there is Mr. Sidney Dillon and Mr. Jay Gould, of New York, myself, and Mr. A. J. Poppleton; that is the present board of directors.

Q. Are all officers and directors of the Pacific Express Company directors or officers of the Union Pacific, except yourself?

A. No, sir; I think not.

Q. State what director or officer of the Pacific Express Company there is who is not also a director or officer of the Union Pacific Railway Company?

1144 A. To my knowledge Mr. Hopkins is not an officer or director in the Union Pacific, so far as my knowledge extends.

Q. The principal place of business of the Pacific Express Company is Omaha?

A. Yes, sir.

Q. What is the capital stock, and how is it divided?

A. Well, I don't know as I can tell how it is divided; the capital stock is $5,000,000, I believe.

Q. You were asked in reference to what the requirements of the company were in reference to horses and wagons to do an express business; does the Pacific Express Company own horses and wagons?

A. Yes, sir.

Q. For the purpose of doing that business?

A. Yes, sir.

Q. What is the amount of horses and wagons in number that the Pacific Express Company own, and their value?

A. Well, sir, without going to the records at Omaha, I cannot tell

A. The express department of both these roads had been operating under one management for some time prior to the organization of the Pacific Express Company.

Q. Explain how it was that the express department of the two roads were carried on under one organization prior to the time of their consolidation?

A. Well, they were carried on under one management. There was no different organization from the railway company, the earnings of which were kept separate, and the expenses of which were kept separate; the earnings were remitted to the cashiers of the roads on that basis, of each road paying its own expenses, and receiving its own earnings.

Q. Then, according to that, the express earnings of the Kansas Pacific and Union Pacific were pooled, and were carried on under one management for some time prior to the consolidation of these roads?

A. The management was the same, sir. The earnings were not pooled; each road had its own earnings, what it earned; each paying its own expenses, and the expenses were charged up to each. I may state, that for a good while, I don't remember the dates when all these things were changed exactly, but for some years,
1142 the Kansas Pacific express was all under my management,
and I was also manager of the Union Pacific express department. The accounts of the Kansas Pacific were kept in the general office of the Union Pacific at Kansas City, and the accounts of the Union Pacific at Omaha; and there was no intermingling of the business whatever, except that I was superintendent of both. Then, for perhaps a year prior to the first of November, 1879, for economy's sake and convenience, the accounts were all kept at Omaha for both these roads, as far as the express department was concerned.

Q. If, in point of fact, there was a change made from an express department to the charge of a separate organization, under the name of the Pacific Express Company, for something like a year prior to the consolidation, can you give no other reason than you have given for such action?

A. No, sir; it is not a fact; there is no other reason to give if it was a fact; but I am certain you are mistaken as to the date of that.

Q. Well, what is the date, according to your belief?

A. As to when the consolidation took effect?

Q. Yes; You have stated that in November, 1879, the Pacific Express Company was formed.

A. Yes, sir; I stated the reasons, and there is no other reason known to me.

Q. Is the Pacific Express Company a corporation?

A. Yes, sir; under the general laws of the State of Nebraska—general incorporation laws.

Q. Who are its incorporators; are they railroad managers, or any of them?

A. Well, my recollection is that the incorporators were—the original incorporators—myself, J. W. Gannett, and A. J. Poppleton; I am not certain, but I think there were only three original incorporators; I think that is what the law is.

1143 Q. At that time you were general superintendent of the express department of the Union Pacific?

A. Yes, sir.

Q. And Mr. Poppleton was the attorney of the Union Pacific?

A. Yes, sir.

Q. And Mr. Gannett was general freight agent?

A. He was the auditor of the Union Pacific.

Q. It is your recollection that they were the only incorporators?

A. Yes, sir; the original incorporators; there might have been more, but my impression is that is all.

Q. According to your best knowledge, Mr. Morsman, are any of the railways over which the Pacific Express Company does business incorporators of that company?

(Objected to, as irrelevant and incompetent.)

A. No, sir; I don't understand that they could be.

Q. Who are the present officers of the company?

(Objected to, as incompetent and irrelevant.)

A. Mr. T. L. Kimball, of Omaha, is president; Mr. A. L. Hopkins, of New York is vice-president; Mr. J. W. Gannett is secretary and treasurer. Do you want the board of directors?

Q. Yes, sir.

A. These three were also directors, and in addition there is Mr. Sidney Dillon and Mr. Jay Gould, of New York, myself, and Mr. A. J. Poppleton; that is the present board of directors.

Q. Are all officers and directors of the Pacific Express Company directors or officers of the Union Pacific, except yourself?

A. No, sir; I think not.

Q. State what director or officer of the Pacific Express Company there is who is not also a director or officer of the Union Pacific Railway Company?

1144 A. To my knowledge Mr. Hopkins is not an officer or director in the Union Pacific, so far as my knowledge extends.

Q. The principal place of business of the Pacific Express Company is Omaha?

A. Yes, sir.

Q. What is the capital stock, and how is it divided?

A. Well, I don't know as I can tell how it is divided; the capital stock is $5,000,000, I believe.

Q. You were asked in reference to what the requirements of the company were in reference to horses and wagons to do an express business; does the Pacific Express Company own horses and wagons?

A. Yes, sir.

Q. For the purpose of doing that business?

A. Yes, sir.

Q. What is the amount of horses and wagons in number that the Pacific Express Company own, and their value?

A. Well, sir, without going to tho records at Omaha, I cannot tell very nearly, but I should think 125 or 150 horses—maybe more; I don't know but 200.

Q. Where are they distributed?

A. They are in a great many different places; they have the largest number in St. Louis of any one place; perhaps next to that would come Denver, Kansas City, some at St. Joe, Atchison, Omaha, Topeka, Lawrence, Leadville, Jefferson City, Mexico, and we hire perhaps fifty horses in Chicago; we don't own any there; every other place we own them, that I can now call to mind.

Q. Do you recollect what return was made in 1880 at Omaha of the value and extent of the horses and wagons and harness of the Pacific Express Company for taxation?

A. I don't know anything about that, sir.

1145 Q. You don't know that two horses, two wagons—one single and one double—valued at $230, was the extent of the property owned by the Pacific Express Company in 1880, as returned to the assessor at Omaha as owned by the Pacific Express Company?

A. I don't know that that is it, but I should say that that was about right for what property was in the city of Omaha at that time? the tax return made in the spring of 1880 would have been for the year 1879, and that would have been about what it was valued at for the town of Omaha.

Q. Can you say positively that the several railroads over which the Pacific Express Company runs its express had no interest in or owned any part of the capital stock of the Pacific Express Company?

A. I have not said so.

Q. I asked if you can?

A. No, sir; and I don't propose to do so.

Q. As far as you know, they have not; is that your answer.

A. Oh, no; I have not intimated that.

Q. Very well; what do you say in regard to that?

A. You have not asked me as yet, Colonel, whether they have any interest in it or not?

Q. Very well; I now ask you if either of the railway companies over the roads belonging to which the Pacific Express Company carries its express, has any interest in the Pacific Express Company?

A. I understand that they do.

Q. How?

A. That the Union Pacific, and Wabash, St. Louis & Pacific, and the Missouri Pacific—the old Missouri Pacific—have an interest in the express, in the earnings.

Q. State how.

A. Well, I don't know anything about that, as to what condition the stock may lay, but I know the earnings—that the Union Pacific Railway Company—the net earnings—has 64 per cent., the Wabash, St. Louis & Pacific railway has 25 per cent. (I am talking 1146 of to day), the Missouri Pacific railway has eleven per cent.; that is the Missouri Pacific railway proper.

Q. Has the Pacific Express any contract with any of the roads over which it carries its express; and, if so, state what they are?

(Objected to, as irrelevant and incompetent.)

A. It has a contract with a good many diffent lines that I don't know as I am able to tell you. I could enumerate some of the roads; there is the Utah Central, the Utah Southern, the Wasatch & Jordan Valley, the Quincy, Missouri & Pacific, the Kansas Central railway, the Manhattan, Alma & Burlingame, the Denver, South Park & Pacific, the Missouri, Kansas & Texas, the Texas Pacific, the International & Great Northern, possibly some others that I do not call to mind just now.

Q. Has it any with the Missouri Pacific?

A. No contract for any stipulated payment; no, sir.

Q. Has it any with the Union Pacific Railway Company?

A. No, sir; not for a stipulated payment.

Q. Has it any with the Wabash, St. Louis & Pacific?

A. No, sir; not for a stipulated amount, other than I have before stated, for a certain proportion of the earnings.

Q. When was the contract with the Missouri, Kansas & Texas made?

A. It dates from the 1st of February last, is my recollection.

Q. That is, 1881, you mean?

A. Yes, sir; to the best of my recollection, the 1st of February last.

Q. When was the earliest of these contracts made; have you any idea of that; about when?

1147 A. Some of them were made the 1st of November, 1879, as far as the Pacific Express Company is concerned.

Q. What ones?

A. These Utah lines, that I mentioned particularly.

Q. Any contracts with the railroads in the State of Missouri at that time?

A. As long ago as the 1st of September, 1879?

Q. Yes; or within a year after that.

A. Not so early as that, unless it was the Quincy, Missouri & Pacific; I have forgotten just what date that began.

Q. Is it not a fact that the Union Pacific, the Missouri Pacific, the Wabash, St. Louis & Western roads own the amount of the stocks of the Pacific Express Company proportionate to the number of miles over which your express company runs over the roads?

A. No, sir; that is not a fact.

Q. You have not answered, I believe, the question I put to you, whether you could state that any of the roads last named own any of the stock in the Pacific Express Company?

A. Well, I suppose they do.

Q. Do you know anything about it; can you state what amount they do own?

A. No, sir; I don't know what amount they own; I have never seen the stock books.

Q. You are one of the original incorporators?

A. Yes, sir.

Q. You state you do not know how the stock was distributed. You say you are one of the original incorporators?

A. Yes, sir.

Q. And why don't you know how the stock was distributed?

A. Well, I don't know anything about how the stock now stands. When the Pacific Express first started, it did not operate on the Missouri Pacific railway; it also did not operate on the Wabash lines
of the Mississippi river, and there have been a good many
1148 changes since, and I suppose there have been changes in the
stock.

Q. Don't, in point of fact, the earnings of the Pacific Expres Company come to those three railroads last named in the shape of dividends upon their stock, rather than earnings upon the business done.

A. No, sir; it is business done. I have stated the net earnings, after paying all expenses and paying the leased lines, are divided; 64 per cent. to the Union Pacific railway, as now, 25 per cent. to the Wabash railway, and eleven per cent. to the Missouri Pacific railway, that makes 100 per cent. Whether that is the relative proportion of the stock, the whole or not, I am not advised; I simply know that such is the direction of the board of directors.

Q. What proportion of the gross earnings of the express business is the expense of hauling by the railway?

A. I don't know anything about that, sir.

Q. Did you ever make a calculation of it?

A. No, sir.

Q. Do you know whether any return was made by the Union Pacific railway of the cost of hauling express goods—the proportion?

A. Not that I know of; I don't know anything about it, sir.

Q. You don't know that seven and a half per cent. was stated in the report made by the Union Pacific Railway Company to the Government.

A. No.

Q. As to being the proportion of expenses?

A. No, sir; allow me to explain. It is stated seven and a half per cent. was the expense of doing the business, not of hauling. The expenses of the Union Pacific express department seven and a half per cent. of its gross earnings.

Q. Seven and a half per cent. of the gross earnings was the expense
of the express department?
1149 A. Yes, sir; for salaries, stationery, horse hire, feed, and
such matters that had no bearing on transportation. I don't know that it was stated for a term of years, but I think such—I know such was the fact. Perhaps one or two years, perhaps more.

Q. Is there any auditor of the business of the corporation of the Pacific Express Company?

A. Yes, sir.

Q. Where does he reside?

A. At Omaha.

Q. What is his name?

A. W. S. Bechel. I did not name him before, with the officers because he was not elected by the board; he is an appointee of mine.

Q. The amounts named as the payments to the different railroads—64 per cent. to the Union Pacific, 25 per cent. to the Wabash, St. Louis & Pacific, and eleven per cent. to the Missouri Pacific, absorbed the whole of the earnings. I suppose that that is the net earnings, and the expenses of the Pacific Express Company have been deducted from them?

A. Yes, sir; payments to the leased roads with which we have contracts, and stage lines, for material, supplies, salaries, and all expenses are deducted.

Q. You spoke of accessorial service; will you explain what you mean by accessorial service?

A. I gave my definition of accessorial service as that service that was performed by wagons or otherwise, between depots and offices, or between places of residence or business houses of the individual owners of goods transported.

Q. You don't class messengers then as part of the accessorial service?

A. No, sir; that was not my definition of it.

Q. The cost of performing express service is the same, is it not, whether it is done by a railway or done by an independent company?

A. Well, if each went to the same expense.

Q. For doing the same business I mean, of course?

1150 A. That depends altogether on how each one does it; one might pay larger salaries than others, and be more extravagant than another; I cannot say it would be the same.

Q. But it requires the same instrumentality to do it, whether it is done by the one or the other?

A. Yes, sir; in the abstract it requires the same.

Q. You stated in direct examination, in your opinion, the public was served at less cost by the express department of a railroad than by an express as a separate and independent express company; state why you think so.

A. Well, I did not give that as a general opinion; I gave that as far as my knowledge extends, as a general fact; as far as my acquaintance goes with the express department of railways, that the rates to the public were less than they had been before by former occupants of the lines.

Q. Was the expense less in carrying to the patrons, during the time when the express was carried by the express department of the Union Pacific, than it is now?

A. No, sir; because there has been a continual reduction of rates for the carriage of express for the last ten years; but the rates were less under the express department of the Union Pacific railway since it started than it was before by Wells, Fargo & Co., who formerly occupied the lines immediately preceding the organization of the express department of the road; and there were numerous, constant, and repeated reductions on the part of the express department of the road, as time went along.

Q. So that the reduction is rather in the increased reductions of the express service than reductions on account of the manner in which it is done; whether it is done by separate and independent companies, or by an express department, is it not?

A. In any case that I have known in the organization of an ex-
press department, the rates were less immediately on that
1151 organization than they were the day preceding, when it was
being done by some express company over the same road.

Q. That is because they happened to have taken place when this gradual reduction of express rates was taking place, was it not?

A. I think not, sir.

Q. Are not the rates of the Pacific Express Company lower now than they were when it was carried by an express department of the Union Pacific railway?

A. In some respects, yes; in others again, they were about the same, practically the same.

Q. Has the Pacific Express Company any arrangement or understanding or agreement with the St. Louis, Iron Mountain & Southern Railway Company to carry express freight, in relation to Texas freight, or any freight?

(Objected to, as irrelevant and incompetent.)

A. None; except to pay them the regular rates from here to Texarkana for what they carry for us.

Q. By that arrangement, do you pay $2.50 from here to Texarkana per 100 pounds?

A. I don't remember what the rate is, sir; but whatever it is we pay it.

Q. You cannot tell what the arrangement is per 100 pounds?

A. No, sir; I don't remember what it is. We deliver our property to their hands, and they carry it for us and charge us for it; and the understanding is, we pay whatever the local rates are.

Q. What proportion of the express matter, destined to Texas, do you send over the Iron Mountain railroad, and what proportion over the Missouri, Kansas & Texas railway?

A. I cannot tell you the proportion we send the Missouri, Kansas & Texas; our Texas connections are not very good that way, and we have not been running any of those lines but about thirty days, and of course the results are a little uncertain.

1152 Q. When you say your connections are not good, of which road do you speak?

A. The Missouri, Kansas & Texas railway; it does not connect with some portions of the Texas & Pacific road, and the International & Great Northern, to make as good time as the Iron Mountain railroad does; at the present time it does not.

Q. Then you use the Iron Mountain largely for your Texas business, do you?

A. Yes, sir; at present. Our connections the other way improve every little while, and we expect to be able to send more over that road.

E. M. MORSMAN.

1153 St. Louis, *April* 9, 1881.

Parties met pursuant to adjournment.

L. A. Fuller, of lawful age, sworn and examined on the part of the defendant, testified as follows:

Direct examination by Col. Broadhead:

Q. Where do you reside?

A. In St. Louis.

Q. In what business are you engaged?

A. I am engaged in the express business, connected with the Pacific Express Company.

Q. What office do you hold in the Pacific Express Company?

A. Superintendent of the Eastern Division.

Q. What territory does the Eastern Division cover?

A. It embraces all our lines east of the Missouri river, and also our lines in Texas.

Q. What roads do you transact business on in your department?

A. The Wabash and branches; the Missouri Pacific and branches; including the M., K. & T.; the International & Great Northern of Texas, and the Texas Pacific.

Q. Your headquarters are in St. Louis, are they?

A. Yes, sir.

Q. You have an office in St. Louis for the transaction of your business here?

A. Yes, sir.

Q. How long have you been engaged in the express business?

A. I commenced in 1854.

Q. With what company?

A. With the United States Express.

Q. Where were you stationed then?

A. I commenced first at Rock Island, Illinois.

1154 Q. What office did you hold in the United States Express Company?

A. I drove the delivery wagon at first.

Q. You have been acquainted with the express business since that time?

A. Yes, sir.

Q. In what different capacities have you acted?

A. As messenger and agent and superintendent.

Q. Your business has been altogether outside business; you have not been confined to office business, or anything of that sort?

A. Not very much.

Q. Are you acquainted with the business in all its details; I mean in the transmission of matter?

A. I have general knowledge of it, but I cannot say I am well acquainted with it in all its details.

Q. What agencies has the Pacific Express Company at St. Louis for the receipt and delivery of packages?

A. We have an office at 216 North Fifth street; also a depot office on the corner of Eleventh and Spruce streets.

Q. You receive packages at both offices, do you?

A. Yes, sir.

Q. How are those packages collected?

A. A few are brought to the office, but most of them are collected by wagons.

Q. Is there any difference made in the charge to the shipper when the packages are delivered by shipper or when they are received by express agents?

A. No, sir; no difference.

Q. Express packages are put together and arranged at both these places, are they, or at only one?

A. The matter that is collected by the wagons and the drivers is taken to the depot, and there billed out as freight.

Q. Well, do they require any further handling by your own agents after they get to the depot, or are they delivered direct to the railroad company?

1155 A. They are not delivered to the railroad company at all; they are in our charge all the time. We take them to the depot and bill them, and then they are taken to the cars by our own wagons and put on the cars.

Q. And then put in charge of a messenger on board of the cars?

A. Yes, sir.

Q. Is the Pacific Express Company a department of any road, or is it a separate and independent company?

By Judge BRECKINRIDGE: A separate and independent company?

A. Yes, sir.

By Col. BROADHEAD: During your experience have you ever been connected with the express business in cases where the railroads have a separate department of their own?

A. Only a short time, sir. When I first came to St. Louis the express business on what was then the North Missouri was operated as an express department of the road. That was on the first of September, 1879. On the first of November the Pacific Express Company was organized.

Q. Prior to that the business was done on the North Missouri railroad by a separate department of the company, was it not, or by the road itself?

A. It was operated for them. It was known then as the Union and Kansas Pacific Express. It was an extension of the express department of the Union Pacific railroad.

Q. How was the express business done on the Union Pacific railroad at that time?

A. It was done as a department of the road.

Q. And this was a branch of that department?

A. It was an extension; yes, sir.

1156 Q. How long did you continue in the United States Express Company when you were acting for that company?

A. Nearly twenty-five years.

Q. Do you know what is called accessorial service of your express company, or any express company?

A. I don't know as I know what the term "accessorial" means, and I don't know as I understand what you call it.

Q. When did you first hear it as applying to the business of an express company?

A. Since this suit commenced.

Q. Did you ever hear of it before?

A. No, sir; not applied to the express business.

Q. What has been the custom of the express company with which you have been connected in the matter of charging for the collection of packages for transportation?

A. We never have made any charge where we have done the collecting ourselves.

Q. How, in your judgment as an express man, was the express company compensated for this service in collecting packages and delivering them for transportation on railroads?

A. We were compensated by the increase of business; we always expected to increase our business largely by that service.

Q. During the time you were acting for the United States Express Company, what was the extent of the territory over which that company operated in transacting its business?

A. They did business between New York and the Missouri river; had some offices west of the Missouri river in Kansas and Nebraska, also through Wisconsin and Minnesota.

Q. Are you enabled to state what proportion of places of delivery, and receipt of packages for transportation as express matter, there were where there was no service performed by the company in collecting the packages?

1157 A. I never have given that any thought; I cannot estimate it very closely.

Q. There was a large number of places where there was no such service performed, I suppose?

A. Yes, sir; I should think fully three-fourths where there was no collecting and delivery.

Q. In those instances the packages were delivered by the shippers themselves, were they, at places of transportation?

A. All matter brought to be forwarded was delivered at our office, and the matter received was called for at the office.

Q. By the consignee?

A. Yes, sir.

Q. It would only be at large cities, places where there was a large population, that that service was performed by the express company, would it?

A. Yes, sir; where the business could be largely increased; where there was sufficient business to warrant putting on the delivery.

Q. In your opinion, as I understand, a company was compensated for this extra service by the increased amount of business which it received?

A. Yes, sir.

Q. Do you know anything yourself about the railroad business?

A. Very little.

Q. Have you ever acted as express messenger on the railroad trains?

A. Yes, sir.

Q. How long did you act as an express messenger?

A. I think it was about a year and a half, perhaps not quite so long.

Q. You were acting in the same capacity you are acting now, at the time the North Missouri railroad and Wabash and Pacific did their own express business?

A. Yes, sir.

1158 Q. I will get you to state whether, in your opinion as an express man, a railroad company can enter the express business on its own account and keep up a department for that purpose.

(Counsel objects to the question, both as to the form and substance, and as leading and incompetent.)

A. I see no reason why they could not do it.

Q. Have you made yourself familiar in any way with the business done by railroads which have employed their own agents, and had a separate express department of their own?

A. I am not very familiar with it; I have seen its workings some, but I am not very familiar with it; that is with railroad express departments.

Q. Have you had connections and business relations, as an officer of the Pacific Express Company, with railroads which were doing business of that kind?

A. Yes, sir; for the last year and a half.

Q. On what railroad?

A. The Ohio & Mississippi and the Iron Mountain.

Q. This business has been done in the receipt and forwarding, I suppose, of packages over those roads by your own express company?

A. Yes, sir.

Q. Does the Pacific Express Company receive packages now to be transmitted by the Ohio & Mississippi railroad, by its express department?

A. We received them at our own office, and transfer to them.

Q. And you receive similar packages from them transmitted to you?

A. Yes, sir; transported to our offices.

Q. What character of packages have you received in that way, from lines of railroads which are doing their own express business?

A. Almost all kinds of express matter, freight, money collections, notes, and drafts.

1159 Q. All kinds of matter that are transmitted by express companies especially?

A. Yes, sir.

Q. I will ask you to state whether, in your opinion, the use of these outside agencies, which perform what is called accessorial service—as it has lately been defined—tends to facilitate the handling of packages to be sent by express; and, if so, how?

A. It does, to a very large extent; in fact we could hardly get along without it in large places.

Q. In case those agencies were not used, in your opinion would the business be increased or diminished?

A. I don't think there would be much express business.

Q. What is the special business of superintendent of this division of the express department of the Pacific Express Company?

A. I have charge of all outside of the agencies in the division, and all the employés.

Q. Did you ever act in the capacity of superintendent before in any other express company?

A. Yes, sir; I acted in that capacity with the United States Express Company about twelve years.

Q. For the last twenty-five years the express business has been your sole business; or have you been connected with any other during that time?

A. I have been engaged in some other, but not to occupy my time at all.

Q. On what railroads in the State of Texas did you say the business of the Pacific Express Company is done?

A. The International & Great Northern and the Texas & Pacific.

Q. And you have superintendence of the business on those roads?

A. Yes, sir.

Q. Which one of those roads connects with the Iron Mountain railroad at Texarkana?

A. The Texas & Pacific.

1160 Q. The Pacific express then receives packages which are transmitted over the Iron Mountain railroad, either by the Southern or by the Iron Mountain express?

A. We do, if they give them to us.

Q. I mean you are there to do that business?

A. Yes, sir.

Q. And you do that kind of business to a certain extent?

A. Yes, sir; we receive from the Iron Mountain; the Southern Express Company, I guess, don't give us anything.

Cross-examination by Judge **Breckinridge**:

Q. You are competing in the same business, are you not?

A. Yes, sir.

Q. I would like to ask you a question concerning certain terms used occasionally, and I would like to know how you define them, in order to guard against any misunderstanding; when an express man speaks of bringing express matter over two lines of express companies which connect and interchange freight from a point in the territory of one to a point in the territory of another, upon one classification, what does that mean?

A. In making a rate from——

Q. Just select your own point in the Pacific Express Company's territory and in the Iron Mountain territory; say from Mexico, Missouri, to Charleston, in Missouri?

A. The rate from Mexico, Missouri, would be one dollar a hundred.

Q. To where?

A. To St. Louis; I don't recollect what the classification would be on a ten-pound package.

Q. Assume it.

1161 A. Take a point on the Iron Mountain railroad where the rate was the same—one dollar a hundred—if not billed through, there would be two classifications; the classification of a dollar a hundred between Mexico and here, and the classification of a dollar a hundred between here and Charleston, we will say, and if billed through, the classification would be slightly less than it would be on two classifications.

Q. If I understand, then, when you carry freight from the territory of one express company into the territory of another upon one classification, it means the sinking of the two local rates, which go to make up the whole rate, and a diminution of them somewhat by an agreed percentage?

A. Yes, sir.

Q. The effect of this is to make the service practically one to the shipper?

A. Yes, sir; the same as one line.

Q. And the rate of compensation practically less to the carrier?

A. Yes, sir.

Q. Upon an agreed rate of discount between them?

A. Yes, sir.

Q. And the effect of this is a discrimination, is it not, against any company seeking to do the same business which cannot effect this discounting arrangement?

A. We charge the same to all companies.

Q. Precisely; but if it should happen the company cannot make that arrangement with either one of the express companies thus serving its territory, the result is a discrimination if it cannot be done, is it not?

A. If it cannot be done, perhaps it might be; but I don't know why it cannot be done; we offer the same facilities to all.

Q. Suppose the Pacific Express Company sends freight from St. Louis over the line of the Iron Mountain Railroad Company, and into its own territory at any given point in Texas, it fixes a 1162 through rate upon one classification with the Iron Mountain railroad department for that, does it not?

A. Yes, sir.

Q. Which is less than the combined rates over the line of the Iron Mountain and over the route of the Pacific?

A. Yes, sir; it is a little less on small packages.

Q. I am not speaking now of the amount, but it is less, is it not?

A. Yes, sir.

Q. Now, suppose the Southern Express Company is not able to make a similar arrangement for billing upon one classification, the effect of that would be the Southern Express Company would have to pay more to the Iron Mountain express department for the same service than the Pacific Express Company would, would it not?

A. That would be the effect if they could not make any arrangement.

Q. I am assuming that. In all cases then, practically, where one classification is established between two companies, it creates an actual discrimination against a company seeking to do the same business if it cannot make the same arrangement, does it not?

(Counsel objects to the question as argumentative, and also objects to all the preceding questions on the same ground.)

A. I don't know but what it would operate that way if they could not make such an arrangement.

Q. I am assuming that they could not; now, doesn't it necessarily result that way if they cannot?

A. Yes, sir; it does, to a slight degree.

Q. If, then, the Pacific Express Company is doing its business on the Iron Mountain railroad on such an arrangement, and the Southern Express Company cannot make such an arrangement,
1163 there is an existing discrimination, isn't there, against the
Southern Express Company?

A. That may be.

Q. Is it not necessarily so if the state of the case I have assumed exists; doesn't it necessarily work a discrimination against the Southern Express Company?

A. If they choose to put themselves in that position, and will not make such an arrangement.

Q. No matter how they become so, if they are in such a position that they cannot make such an arrangement, then it necessarily discriminates against them, doesn't it; I am not saying how the failure to do this and the difficulty in doing it comes about, but I am assuming that they cannot?

A. If they put themselves in the position of a local shipper they are treated the same as a local shipper.

Q. If they cannot make an arrangement, for any reason, with the express department of the Iron Mountain railroad to bill through from St. Louis into the other territory beyond Texarkana at one classification, it necessarily results in a discrimination against them and in favor of one that can?

(Counsel renews his objection.)

Q. I wish to know whether I am not right in saying it must be so, if they cannot effect an arrangement?

A. I suppose it is, if they cannot effect such an arrangement.

Q. There seems to be some trouble in your mind about the use of the word "accessorial;" tell me what you understand that to mean as applied to the express service?

A. Well, I understand anything as accessorial that aids the business, but I do not know in what sense you use it.

Q. Now, I wish you to tell me in what sense you have used it in

your answers to Col. Broadhead; to what you have applied,
1164 in other words, this term "accessorial" in connection with the express business exactly, that we may understand how it is used?

A. I think I answered that I did not know in what sense they used it.

Q. No; but you answered in connection with the questions something you supposed to be accessorial; now, please do me the favor to state what you have meant in your answers to Col. Broadhead, as far as you have used the word "accessorial;" my object is, to be sure that we understand our respective uses of the term.

A. He spoke of gathering up and delivering goods, and that I infer is what he means as accessorial service; and that is what I take to be accessorial service.

Q. Do I correctly understand you in saying that your use of the term "accessorial," as applied to the express business, is the use of horses and wagons, and those who conduct them, in gathering freight for the express company, or a department of the express company, and in delivering it at the point of destination?

A. That is accessorial service.

Q. You include nothing else in that in the use of the term "accessorial"?

A. Well, I don't know where you divide the line.

Q. I am speaking of your use only of it.

Col. **Broadhead**: He has not used it at all.

The **Witness**: I have not used it that I know of.

Q. The things which Col. Broadhead has defined, and the sense in which you have used the term "accessorial," if you have used it at all, are simply the uses of horses and wagons and those in charge of them in collecting at shipping points and delivering at destination points that express matter?

A. Yes, sir; that is what I consider accessorial service in the sense you people use it.

Q. Do you know the sense in which we use it?

A. Well, I suppose that is it; I don't know for certain; it has never been explained to me.

1165 Q. And if you used the term, you used it in that sense?

A. Yes, sir.

Q. If you were called on, after your long experience as an expressman in various departments of the service, to say what was the governing essential idea in the express, business what would you say it was?

A. It is carriage and delivery of money and freight, and making collections.

Q. Is not the central, original, and essential idea of the express business to secure dispatch with safety in the transmission of packages of any kind?

A. Yes, sir; that is the essential thing.

Q. Does not that therefore mean the use of the most rapid and secure agencies for transporting this material?

A. Yes, sir.

Q. By rail, by steamboats, by stage, the best and most rapid appliances?

A. Yes, sir.

Q. Is not that the heart of the express business?

A. That is all there is of it.

Q. Now, wouldn't you say that everything that aided this central idea was accessory to it?

A. Well, I suppose it would be; everything is accessorial in a certain sense.

Q. Very well, now; when a man speaks of accessorial service is it not natural to suppose that he means exactly what that does mean; that is, if you cannot answer it in that form, that everything that is accessorial to the rapid and safe transmission of matter committed to an express company is to be considered as included in that term when applied to the express business?

A. Yes, sir; there are a great many things that might be considered as accessorial service.

1166 Q. But answer my question, which was: When you have limited, under the guidance of Col. Broadhead, accessorial service to mean the use of horses and wagons in possibly one-fourth of the places where an express company does business, you have rather narrowed the limit of the proper application of those terms, have you not?

(Counsel renews his objection to the question as argumentative.)

A. The term as used, as I have heard it discussed, means the gathering up and delivery of freight and parcels.

Q. But now, on reflection, you say it has properly a much wider and larger significance than you had supposed; did you not say that?

A. Well, we could call the transportation of freight on railroads accessorial; everything is accessorial.

Q. To what?

A. One branch of it is accessorial to another.

Q. But the one central idea, the one central object, is the thing around which the accessories are built, isn't it?

A. Well, I suppose it is.

Q. Suppose if the central and original object of the express business is to secure safe and rapid transmission to the public of what is committed to the express company, everything accessory to that would be included under that term, wouldn't it, if it was used in its full meaning?

A. Every part of the business would be accessorial.

Q. Except the central, original purpose?

A. Well, I don't know what you would call the central and original purpose.

Q. I had understood you to say the original purpose of the express business was to secure the rapid transmission of matter committed to an express company?

A. Yes, sir.

Q. Now, everything that aids it, if it don't produce it, is accessorial, is it not?

1167 A. Taking the full and broad meaning of the word, it is.

Q. That is exactly what I am trying to take; we want to know what accessorial service means. Now, then, I ask you again, from your experience and knowledge as an expressman in all these years, whether the limitation of the term "accessorial" upon what Col. Broadhead has examined you, is not very much limited within what accessorial service properly means?

A. I never heard the term used in connection with the express business until quite recently; and I have heard it used, and it has been used, as meaning the gathering up and delivery of goods in cities.

Q. And nothing else?

A. Yes, sir.

Q. As far as you have used it, you have used it in that sense?

A. Yes, sir.

Q. Now, doesn't it appear that that is a very much limited sense upon the facts?

(Counsel objects to the question, as incompetent and irrelevant, and as undertaking to make the witness give an opinion of what he says he don't know anything about or ever heard of before.)

A. I don't know as I comprehend the question exactly.

Q. Is it not clear that any use of the term "accessorial service," as applied to the express business, which limits it to the use of wagons and horses for the collection and delivery of matter at terminal points, is a term narrower than the proper meaning of the words would imply?

A. I understand that any branch of the business might be considered accessorial.

Q. Anything that is not the trunk of it would be accessorial to it; am I right?

A. Yes, sir; I think it would.

1168 Q. Will you be kind enough, now, to tell me by whom you have heard this term "accessorial service" used, as you say you have, in connection with this suit; is it not by these St. Louis, Iron Mountain & Southern railway express department people?

A. I have seen it in print, and I have heard it talked of some; Judge Glover spoke to me about it at one time.

Q. But your original impressions with regard to its correct use; have they not been derived from the St. Louis, Iron Mountain & Southern express department people?

A. No, sir; I had more talk with Judge Glover in regard to it, I think, than with anybody else; he referred to it as the collection and delivery of parcels.

Q. And nothing else?

A. Nothing else.

Q. I think you must have misunderstood.

Witness: Mr. Agee was present and heard the conversation.

Col. **Broadhead**: You mean Mr. Glover in this case?

Witness: I suppose he is connected with it; he sent for me to come down there, and he referred to it in that sense, and asked me the probable cost of that service.

Judge **Breckinridge**: That is, the cost simply of this terminal service with horses and wagons at about one-fourth of the places in which the company would do business?

A. Yes, sir; points at which we have that service.

Q. Which you have said would be about one-fourth?

A. Yes, sir.

Q. Would you think, from your experience in the express business, after the definition you have now given as to the proper use of the term "accessorial service," that a messenger of an express company, in charge of its express matter, receiving and delivering at stations and terminal points, and keeping the custody
1169 of all express matter, would be properly considered as doing an accessorial service?

A. No, sir; I should not so consider it; I should consider that a part of the trunk of the business, as you call it.

Q. You do not consider that accessorial at all?

A. No, sir.

Q. You don't consider, if I understand, that from the very inception of the business, a messenger in charge of the matter committed to an express company was one of the chief accessories of the business to secure safety?

A. That was the express business in its origin; a man carrying.

Q. The rapid dispatch of goods in the care of a messenger; that was it, was it not?

A. Yes, sir.

Q. Do you consider the care of the messenger an essential part of the business?

A. Yes, sir.

Q. When your messenger, then, is removed, you consider your business as essentially interfered with, do you?

A. We would not undertake to do business without a messenger in some form.

Q. Would it answer to have this messenger in another car on the same train, or must he be in the actual presence of his freight all the time, for the objects for which he is employed?

A. We always have the messenger in charge of the business.

Q. Do you consider it essential that he should be?

A. We do have cases where we send a portion of our business through some other company, and they take charge of it for us.

Q. But when it passes to the hands of the other company it is no longer in your possession, and you then are employing another agency for your business?

A. Yes, sir.

1170 Q. But as long as you have charge of it, it must be in the hands of your messenger?

A. It is put in their charge temporarily, and given to us again.

Q. But as long as you have charge of it, it must be in the care of your messenger; and when you pass it to another company, it must pass into the care of their messengers?

A. It is in the care of their messengers temporarily.

Q. You mean while in transit from point to point it is necessarily in charge of some messenger?

A. Yes, sir; either our own or somebody else's.

Q. And without that you would not be willing to do the business at all?

A. No.

Q. If I understand you, and I am not sure whether it was clearly put down, the Pacific Express Company, which you represent, and the Southern Express Company, from St. Louis South, are competing for the same business with the public; are they not?

A. Yes, sir.

Q. If I understand you, you said it was not the custom of your company to make any charge for what you have spoken of as accessorial service?

A. No, sir; it is not the custom.

Q. You meant by that, this small terminal service of gathering up and distributing freight, and nothing else?

A. No, sir.

Q. Let me ask you as to that further: Whether, in fixing your rates, you do not fix them with reference to the entire volume of the expenses of the business coming from all sources, so as to make a living profit?

A. We generally base our rates on the cost of transportation.

Q. Do you have no reference to anything else?

1171 A. It has been our custom for years to add fifty per cent. to the cost of railroad transportation, and out of that fifty cents to pay our general expenses.

Q. That is, you make an estimate of the entire cost of this business to an express company on a given route?

A. Well, we make an estimate—we take the cost of the railroad transportation, and add fifty per cent. to that in making our tariffs, usually.

Q. So that fifty per cent. of the business goes to the railroad companies which do the transporting?

A. No, sir; one hundred per cent., not fifty per cent.; it would be 66⅔ cents.

Q. You add 66⅔ per cent. for the cost of doing the business to the charge made by the railroad company for carrying your freight?

A. No, sir.

Q. Well, please tell me how it is, then.

A. We add fifty per cent.; it varies, but it has been the usual custom to add fifty per cent. to the cost of transportation; when the fifty per cent. is added, of course it would give the railroad company 66⅔ per cent.

Q. Then give me an illustration of a particular case, that I may see. Suppose the Iron Mountain Railroad Company charge you by contract $50,000 a year to do your business from St. Louis to Texarkana; now, what would you add for the rest?

A. That would depend somewhat on how much freight we were entitled to carry.

Q. Illustrate it any way you like, only I want its application to some exact case, and I supposed that would facilitate you in doing it. Take a rate of $2.50 per one hundred pounds from here to Texarkana—the charge to your company by the railroad company, or the express department of the railroad company, for carrying your freight from St. Louis to Texarkana. Now, what do you add, expressing it in dollars and cents. I understand the rate the
1172 railroad company charges you or your express company is
$2.50 from here to Texarkana per one hundred pounds.

A. If we were paying that that would make a rate of $3.75 per one hundred pounds.

Q. Of which $2.50 would necessarily be paid to the railroad company for the service, and $1.25 would be kept by the express department for its compensation; now, is not this rate, which is to govern its receipts, and of course its profits, after deducting its expenses, fixed upon the general view of all its actual and probable expenses in conducting the business?

A. Well, I have said before, we usually base them on the cost of transportation—base the tariffs.

Q. Bnt we have a case in which we have estimated the cost of transportation; you have told me you add $1.25 to it, which governs all the profit, after deducting the expenses, which the express company is to make; isn't that additional rate made by the express company made with a view to all the expenses the express company expects to incur in discharging its office?

A. Yes, sir.

Q. Now, suppose—that I may see the general working of it—a case in which you have a contract to pay $2.50 per hundred from here to Texarkana, and you make a rate of $1.25 to add to that to cover your express profits and expenses; suppose the rate established is $3.75 per hundred through your express company from here to Texarkana to the public; suppose that a tax of five per cent. on your gross earnings is imposed by the Legislature of the State through which it passes, would that be added to and increase the rate; would that be the habit of the express company?

A. Well, during the war there was a tax imposed on the delivery of every package; that we would collect from the public as we delivered the packages.

Q. You added the taxes to the charges already existing?

A. Yes, sir.

1173 Q. That would be the course that would be adopted in the
case I have supposed?

A. That would depend on the circumstances.

Q. According to express methods?

A. Yes; we might not collect that if we thought it would injure our business by so doing.

Q. But that would be your method as far as you can judge by the past, wouldn't it?

A. Well, I cannot say as to that; it would depend on the circumstances.

Q. But put it in another form; an express company, according to its methods, would add it if they thought the public could stand it?

A. Certainly; an express company is a little selfish, like individuals.

Q. Suppose you were informed, with reference now to the figures we have stated, that the St. Louis, Iron Mountain & Southern railway express department—and I wish you to please pay particular attention to this—had received from the first of June, 1880, to the first of March, 1881, $118,259.69 gross earnings, and that its expenses had been $58,618.80 in that same time, and that it had given no part of those expenses to the railroad company for its service, wouldn't that show that the express department of the St. Louis, Iron Mountain & Southern railway was managed at a far greater cost for accessorial and other service than you have supposed to be the rule among express people?

A. Well, I cannot say that I can answer that question.

Q. What is the difficulty?

A. Well, I don't know what the actual cost is of doing the business.

Q. I have just told you, sir, the net and gross earnings.

A. You were comparing it with the business of other companies?

Q. Yes, sir.

1174 A. I cannot say now whether that is greater or less than our expenses.

Q. Let me call your attention to the fact that in this estimate of expenses it still remains to pay the railroad company for its service of transportation; does that throw any light upon it?

A. Well, I should think the expenses are fully all that they should be.

Q. Are they not monstrously out of proportion to what you have understood to be the proper expenses of the express business; observing that the gross earnings, $118,259.69, the net earnings, $59,641.89, and the cost of transportation—which you have fixed for your company at fifty per cent.—is still to be paid, would that not, I say, be monstrously out of proportion to what your views of the proper cost of such things are?

A. Well, they may be; I cannot say.

Q. Please explain why you cannot do so; you are familiar with the express business, and have been for years, and you must, as an expert, know; and you have given me the figures; now, what is the difficulty?

A. Well, I cannot say what our expenses are; our total expenses of the business.

Q. Supposing that those are the figures, which I have given you, for the time stated, and that the cost corresponding to the cost for transportation which the Pacific Express Company pays is to be deducted from it, wouldn't it leave a ridiculously small margin for a profit?

A. There would not be very much margin, as they pay sixty-six per cent. for transportion.

Q. Just do me the favor to apply your figures to that $118,259.69 gross earnings, $59,641.89 net earnings, $58,618.80 cost, how much would the sixty-six per cent., of which you have spoken, take out of this $59,641.89 to be paid to the railroad company as cost of transportation of the express company?

A. I don't know as I can tell you.

1175 Q. Would you be willing to oblige me by taking pencil and applying your percentage to it; I would be obliged if you would do it; I only want the application of your own figures to this, the gross earnings being $118,259.69, the net earnings $59,641.89, the cost $58,618.80. Now, apply your percentage, 66⅔ per cent. cost for transportation, to the net earnings, $59,000, to see what it would be; or, call it in round numbers $60,000?

A. Taking out sixty-six per cent. it would leave $39,418.86.

Q. Now, if it should appear as a fact, and of course I am asking you a question which I don't want you to assume to be true except for the purpose of the question, if it should appear to be a fact that during this time the Southern Express Company has paid the Iron Mountain Railway Company for express service $40,977.60 at St. Louis alone, it would appear that the express department of the Iron Mountain Railway Company would be bankrupt but for the patronage of the Southern Express Company; wouldn't it?

A. No, sir; I don't look at it in that light.

Q. Please tell me how you do look at it.

A. If they did not get it from the Southern Express they would get it from the public.

Q. But, as a fact, in reference to the business as it is conducted, if it did not get this patronage and income from the Southern Express Company, it would be absolutely worse off than if it had not done anything, wouldn't it, on those figures and doing the business as it is done?

A. As I said before, if they didn't get it from the Southern Express Company they would get it from the public.

Q. But assume that the Southern Express Company might have carried it by some other competing route?

A. I don't think that is to be assumed.

1176 Q. Is there no route through Illinois, Tennessee, and Mississippi?

A. From all I can learn they have diverted everything they could.

Q. Do you know that?

A. I don't know it positively.

Q. But you have heard rumors of the sort?

A. I have been so informed.

Q. Please not put that in your testimony, because it tends to impair your testimony; and answer the question on my supposition, and then explain, if you choose. What I ask is, whether, if it appear that the Southern Express Company during this time had not paid to the railroad company $40,977.60—whether, upon that mode of doing business, it would not appear that the express department of the company had made a loss by its business, and was actually worse off for having done it; I am just saying on that mode of doing business; not on what it might have been, but on that mode?

A. Well, their profits would have been diminished, of course, if that business had been wiped out.

Q. But this wipes all the profits and more besides, doesnt it; nearly $1,000—$39,000 is what is left?

A. If I could not get that business from that source or any other, it would have wiped out the margin to some extent.

Q. Suppose this does not include messengers' fares, and that messengers' fares in addition were paid to the railroad company, it would make it just that much worse to the express department, wouldn't it?

A. I don't know what you are trying to get at.

Q. Suppose you add to the $40,977.60 the $1,000, or whatever it was, paid for messengers' fare, then assuming that much more was paid by the Southern Express Company, it would only make the account still worse for the showing of the express department of the Iron Mountain Railroad Company, wouldn't it?

A. I don't know that messengers' fares enter into that——

1177 Q. But if it were so?

A. If it entered into that, of course it would swell their earnings so much more.

Q. And would they depend on the Southern Express Company that much more for whatever they got?

A. I don't understand messenger fare is included in that.

Q. No; it is to be added to this; suppose it is $10,000 to be added?

A. I don't know just what you are trying to get at.

Q. I have shown by my question that although there is only thirty-nine thousand and some odd hundred dollars, according to the application of your percentage, left to show for earnings, that forty thousand and odd, in the question assumed, was paid by the Southern Express Company for express service, and you have said if it could not have been done in any other way, and that was withdrawn, of course the express department of the Iron Mountain railroad would have been bound to do the business at a loss without that. Now, if you add, say, ten thousand dollars for messenger fare, and which was paid by the Southern Express Company in addition to this, it makes the showing of what was paid by the Southern Express Company, and what was earned from other sources by the express department of the Iron Mountain railway just that much less, doesn't it?

A. That don't go into the express earnings, I understand.

Q. If it did?

A. If it did, it would show in place of $118,000, $128,000 gross earnings.

Q. And show just that much additional for messengers' fees paid?

A. I cannot say that, unless I figure it.

Q. I am asking whether it would have that effect?

A. I cannot see that it makes any difference.

1178 Q. Isn't it that much more paid by the Southern Express Company for express service?

A. It is; but it don't go into the earnings.

Q. But I say if it does; I do not say whether it does or not; you don't know that, do you?

A. No, I don't know; but I understand you it don't.

Q. Well, if it does?

A. If $10,000 is included in that $118,000, of course it would diminish the other net receipts.

Q. Does the Pacific Express Company, in its business on the Iron Mountain railroad, pay messengers' fares?

A. We don't run any messenger over that road.

Q. That is, all the freight of the Pacific Express Company which goes over the Iron Mountain railway is committed to the messenger of the express department of the Iron Mountain railway?

A. Yes, sir.

Q. Going both ways and to all stations along its line?

A. No; we don't do any local business between here and Texarkana.

Q. Only through business?

A. Only through business.

Q. You don't do local business, because that would be competing with the St. Louis, Iron Mountain & Southern railway express department?

A. We have no arrangement for doing any local business.

Q. You don't contemplate or expect to?

A. No.

Q. It would be in the nature of competition with that company if you did?

A. Yes, sir.

Q. And it is not done?

A. No.

Q. You do your business with the road under a contract, do you?

1179 A. Well, we have not any definite arrangement made yet, as I understand; I have not been informed of any.

Q. You have no rates established at all, then, that you pay the Iron Mountain Railway Company?

A. No, sir; not that I have been informed.

Q. You pay them nothing?

A. That is yet to be agreed upon, as I understand.

Q. They render the service, you pay nothing for it, and after a while that is to be settled?

A. That will be settled, I suppose.

Q. But it is not as yet?

A. No, sir.

Q. How long has this been going on?

A. About two weeks.

Q. How can you estimate your proper charges for services rendered to your customers if you don't know how much you are to pay the express department of the St. Louis, Iron Mountain & Southern railway?

(Objected to as incompetent and irrelevant.)

A. Well, we take their local tariff between here and Texarkana as a basis, and then from there on we make our tariffs; we take their local tariff between here and Texarkana as a basis for making our through tariff.

Q. Your profit will come for doing the business over their road from the discount which you may be able to secure from them on their local rates?

A. We expect to make no profit on their portion of the line.

Q. If you should make any, it must come from the discount they would allow you under their local rates?

A. If we made any profit over their line, it would come that way.

Q. But you don't expect to make any?

(Objected to.)

A. No, sir.

1180 Q. You expect to pay the St. Louis, Iron Mountain & Southern railway express department all the money that you earn for services over their road?

A. We expect to pay them their proportion of all the earnings.

Q. And to make no profit yourselves on that part of the line?

A. No profit on that part of the line; we simply use that for the present as a convenience to reach our lines.

Q. If I understand, you don't charge a separate classification on local traffic, but just one through rate?

A. One through rate.

Q. From all points on your line over the Iron Mountain railroad into the territory beyond it?

A. Yes, sir.

By Mr. BROADHEAD: That is because you are not doing a local business on the Iron Mountain railroad?

The WITNESS: Yes, sir.

By Judge BRECKINRIDGE: Can you tell me how much less that is than the local rate would be?

A. I cannot.

Q. Can you give me an idea of the percentage?

A. On business between here and Houston I suppose they would get their proportion of through business; their rate being $2.50 a hundred, and ours $2.50, they would get one-half whatever the earnings would be through; I suppose that would be the arrangement.

Q. You expect that to apply?

A. Yes, sir.

Q. What is the rate from here to Texarkana per hundred?

A. Two dollars and fifty cents.

Q. And from Texarkana to Houston how much?

A. The local rate, I think, is $2.50; I am not sure.

Q. Suppose it is, how much will the through rate be on one classification from here to Houston?

1181 A. I think the through rate is $4.00, but I am not sure.

Q. Of that you are to pay one-half to the Iron Mountain railroad?

A. One-half of the earnings.

Q. To get two dollars you have a deduction there of fifty cents per hundred, or a discount of one-fifth?

A. There would be some reduction on through business.

Q. Still more?

A. There would be some reduction on through business; whatever the through rate is, the division would be on the basis of the two local rates.

Q. Suppose it is $2.50 from here to Texarkana by the Iron Mountain railroad, and $2.50 from Texarkana to Houston by the Pacific, and that it was settled on a $4.00 basis, that would give two dollars to the Iron Mountain railroad and two dollars to the Pacific?

A. Yes, sir.

Q. And that would be cutting the rate of the Iron Mountain railroad fifty cents on $2.50?

A. It would, if settled on that basis.

Q. That is, it would be a deduction of one-fifth?

A. That is the customary way of settling.

Q. And that is what you expect?

A. That is what we expect.

Q. Are you doing business on that expectation, based on that expectation, with the St. Louis, Iron Mountain & Southern railway?

A. Yes, sir; I suppose we are.

Q. If the Southern Express Company in doing business with the Iron Mountain Railway Company enters its matter upon its own through bills from here to Houston, you doing business as you are, doesn't the Southern Express Company have to pay more to the Iron Mountain railway than you do for the same service?

A. I don't know what arrangement the Southern Express has with the Iron Mountain railway.

1182 Q. If they have to pay a local rate they would, on that theory, pay fifty cents a hundred more than the Pacific does?

A. If we were to send our freight to Texarkana we would expect to pay their local rate.

Q. I don't ask that, but I ask if the Southern Express Company is obliged to ship at a local rate over the Iron Mountain railway the goods which it is billing through from here to Houston, it pays more than you pay for the same service, doesn't it; I am assuming that it does?

A. If it bills through I suppose they would.

Q. The Pacific Express Company you have spoken of as a separate organization; it is a corporation, is it not, organized under the laws of the State?

A. Of Nebraska.

Q. Do you remember what its capital is?

A. Six millions, I believe.

Q. A stock company?

A. Yes, sir.

Q. Speaking to you now as an expert, if the express department method has proven so satisfactory why has it been abandoned in the case in which you are concerned, and an independent express company organization substituted for it?

A. It was done for convenience; the express department of the Union Pacific railroad were doing its express business, but those interested in the Union Pacific and Kansas Pacific roads were largely interested in the Missouri Pacific and Wabash roads, and they desired to extend that system over the different roads, and the Pacific Express Company was organized for convenience.

Q. Convenience as to what?

A. In doing the business.

Q. Well, why was it more convenient?

A. Well, it was desired to operate it as a whole.

1183 Q. But you observe that leaves my question unanswered. If the separate express department method of each railroad answered the demands of the business so well, as I have understood you to say, wherever you have known it to be tried, why was it more convenient to do the business otherwise than through one organization?

A. It would be done somewhat cheaper.

Q. Oh, it could be done cheaper?

A. Yes, sir.

Q. Can you tell me about how much cheaper?

A. No, sir; I cannot tell you about how much cheaper.

Q. Have you any percentage to show it?

A. Yes, sir.

Q. Ten or twenty per cent.?

A. No, sir; I cannot tell anything about that, because I have not the figures.

Q. Being cheaper, it would enable you to lessen the rate to the public, wouldn't it?

A. I don't know that.

Q. It would enable you to do it whether you did it or not?

A. I don't know as it is enough cheaper to do that.

Q. But if it was enough cheaper to change the mode of doing the business—that is the only inducement—it would be enough cheaper to enable you to do the business cheaper, and so make larger profits or lesser rates to the public, wouldn't it?

A. If we chose to give it to the public I suppose we might make a little less rate.

Q. Then the effect has been to do it cheaper, and the result has been a larger profit to the express interest, or a lower rate to the public?

A. It saves some expenses.

Q. Has the public got the benefit of that lower rate?

A. I cannot say that they have.

1184 Q. Then the larger profit, without the lower rate, the public does not seem to have had much interest in the change, does it?

A. I don't think the public interest was consulted at all.

Q. In answer to Col. Broadhead's question, as I understand, you said generally that you knew of no reason why this separate express department could not do the express business of all characters as well as the other; doesn't this experience of yours in the formation of the Pacific Express Company as the successor of these various departments show that that is perhaps a very serious question?

A. No; I don't know that it does.

Q. You don't think the fact that it can be done cheaper is any marked evidence that it is better?

A. It can be done a little better, because it enables us to bill through, saves time, and that is one point.

Q. Is not time one of the essentials in the express business?

A. Yes, sir.

Q. Is it not true, then, that an express company, doing business all over the country, can serve the public better than an express service made up of the links of the various roads over which it is done, as to time as well as cheapness?

A. It would be if everything had to stop and be rebilled at every point.

Q. Wouldn't that then be the result—this rebilling—if each company had a separate express department of its own?

A. Not necessarily; we are now making arrangements for billing through with these railroads having an express department of their own.

Q. Thus likening it to the business done by one company throughout the whole country?

A. Yes, sir.

Q. And just in proportion as it cannot do a through busi-
1185 ness as done by one company, it is less satisfactory to the
public than if it was divided on the different lines of the
various roads?

A. The short lines cannot do this through business as satisfactorily as a company having a long line.

(At this point, by consent, the further taking of testimony in the case was adjourned till Tuesday, April 12.)

TUESDAY, *April* 12, 1881.

Parties met pursuant to adjournment, and the further cross-examination of Mr. FULLER was resumed, as follows:

By Judge BRECKINRIDGE: If I understand, you stated that the arrangement which you expected to make with the Iron Mountain Railroad Company, and which you are now working out for the Pacific Express Company, was one by which, illustrating upon a particular case, on a local rate from here over the Iron Mountain railroad to Texarkana was $2.50, and the local rate from there to Houston, $2.50; that you were paying the Iron Mountain railway $2.00, thus making the rate through a $4.00 rate, and that you were giving the Iron Mountain Railway Company absolutely all your profit for that much of the transportation that was done over your route; am I correct in that?

A. Yes, sir; they get all that they earn over their proper portion of the line.

Q. You commit all the express matter of the Pacific Express Company to the express department of the Iron Mountain railroad, to be by them cared for on their route to Texarkana?

A. Yes, sir.

Q. What labor do the Iron Mountain people do on your express matter delivered them at St. Louis going through to Houston, say?

A. They do nothing but take charge of it.

1186 Q. Who receives it on the car?

A. Their messenger.

Q. And it is delivered into his custody?

A. Yes, sir.

Q. Who is the custodian from here to Texarkana?

A. Their messenger.

Q. The messengers of the express department of the Iron Mountain railroad?

A. Yes, sir.

Q. To whom do you look in case of loss of packages while going in the care of their messenger from here to Texarkana?

A. Well, that is a question that has never come up, and I don't know what the decision would be.

Q. Well, whom would you look to, not seeking to determine a question of law, but a question of fact; whom would you look to?

A. We would look to them if it was lost between here and Texarkana.

Q. At Texarkana to whom is it delivered?

A. Delivered to our messenger there.

Q. By their messenger?

A. By their messenger or their transfer man.

Q. An employé of theirs?

A. Yes, sir; well, he is now a joint employé of ours and theirs.

Q. For them to receive from the North and for you to deliver to the South?

A. Yes, sir.

Q. If I understand, then, the practical working of it is that the Pacific Express Company uses the agencies of the Iron Mountain railway express department as such along its whole road from here to Texarkana?

A. Yes, sir.

Q. Including the service of their messenger, and the care and custody of packages by their messenger?

A. Yes, sir.

1187 Q. But still your freight is billed through from here to Houston?

A. Yes, sir.

Q. Now, will you be kind enough to tell me out of your experience as an express man and your familiar knowledge of such things what would be a fair compensation to the Iron Mountain railway express department for this reception of the Pacific Express goods by their messenger—this care of them by their messenger, and this delivery by their messenger of them to you at Texarkana; what would be a fair compensation for that service; I am not speaking of the transportation or hauling here and at the end, if any, but of the care and of the reception of your express matter by the Iron Mountain Railway Company's messenger; of the care and custody of it from here to Texarkana; of the delivery and transfer of it to you at Texarkana, and of the responsibility for it while he has it—what would be a fair compensation to the Iron Mountain express department for that service?

A. A fair compensation would be what the business earned.

Q. But I am seeking now to divide it; what would it be worth expressed in a percentage, please—the local rate from here through is $2.50; of that $2.50 how much would be fairly applicable to that care, trouble, labor, and responsibility?

A. Well, sir, I can give you no idea; I think they would prefer to take that care and responsibility.

Q. I am not speaking of what they would prefer.

A. I know I would rather than to have somebody else take charge of the business in the same car.

(Plaintiff's attorney objects to the answer as not being in any sense responsive to the question, but, on the contrary, being an expression of the opinion of the witness concerning the very matter in controversy.

1188 Q. If, for instance, the local rate from here—the through rate, if you please—from here to Texarkana is two dollars, by an agreement, how much percentage, or how many cents of that two dollars, would be fairly attributable to the care and custody of the messenger for his responsibility, and the expense which it would be necessary to incur in employing and carrying the man?

A. Well, I don't know as I can give you any idea.

Q. Please give me some approximation to it, if you can, in any form.

A. That would depend largely on the amount of business transported.

Q. Just assume any amount of business you please.

A. Well, you can calculate it as well as I can. If they have 5,000 pounds of freight from here to Texarkana, and the messenger's salary is $2.50, or rather $5.00, I don't know what they pay them, or how long it takes them to make the trip——

Q. Well, is there any other element than that; is that the only element, the cost of the messenger's hire?

A. The cost of handling the freight is all.

Q. Then isn't there something earned by the railroad company by carrying this man?

A. I don't know that they make any charge.

Q. That is not the question, whether they charge for it or not, but whether it is not worth something; I may give you your fare, and still it will cost something to carry you.

A. Well, I suppose it is worth something.

Q. Then isn't the responsibility for it worth something; am I not entitled to compensation if I take your $500 parcel; I am responsible for it from here to Texarkana?

A. I suppose that is worth something.

1189 Q. Now, please give me, as near as you can, the estimate of what that one thing we segregated, or sought to segregate, is worth.

A. I have no idea; I cannot approximate it.

Q. Would it be worth twenty per cent.?

A. It might be worth that; might be worth less or more.

Q. Still, you understand we are examining you on the theory that you have had perfect familiarity with these matters for long years; and I wish to get from one thoroughly experienced in that, estimates about matters which are difficult, but which are within your experience; I am speaking of express matter; this is not railroad transportation, except the matter of carriage from here to Texarkana.

A. Well, I have had very little experience with a railroad express.

Q. I got the idea that you had a great deal prior to the formation of the Pacific Express Company.

A. Well, that could not be had in two or three months; I told you from the first of September to the first of November our express business was run as a railroad express.

Q. But that is only your personal experience. You were examined as to your general knowledge and observation as an expressman, were you not?

A. You asked the question if I thought a railroad express could be run as successfully——

Q. Now, are your answers on that subject based entirely on this limited experience that you have had in handling a railroad express?

A. As to whether a railroad express could be run successfully?

Q. Yes, sir.

A. Not entirely.

Q. What other elements of knowledge enter into that?

A. I know about the cost of doing the business.

1190 Q. It is because I supposed you knew, as you say, about the cost of doing the business that I asked you. Now, give some idea of the cost of this particular branch of the service, and the compensation for it, which the Iron Mountain railway does for the Pacific.

(Objected to, as having been already answered, the witness having said he could not give any idea.)

A. I cannot give you any idea as to what the cost would be.

Q. Would you say fifteen per cent. was too much?

A. No, sir; I would not say it was too much or too little.

Q. You decline to give me any figures on that at all?

A. I decline to do it, because I cannot do it.

Q. Still you are familiar with the cost of all the branches of the express service, are you not?

A. I am with some; I don't know that I am with all.

Q. Well, the cost of the actual transportation of express matter, including the pay of messengers and other service, you are familiar with that?

A. Somewhat; yes, sir.

Q. Your answer, if I understand, is that this is worth something, but you are at a loss how to fix its value?

A. Yes, sir; I should say it was worth something.

Q. If, now, Mr. Fuller, it be a fact that the Southern Express Company does not use any of these facilities of the Iron Mountain railroad, and the Southern Express Company does not ever commit its goods to the care of their messenger, does not in any way look to the messenger for the care, custody, delivery, and transfer of their goods, wouldn't that fact entitle the Southern Express Company to a deduction from the rates charged to those for whom that service is rendered—some deduction?

A. I should say not; I should say I prefer to handle the goods myself.

1191 Q. Yes; but independent of the preference, as a matter of right wouldn't the party be entitled to a reduction if it cost something to do it, and the one used it and the other didn't?

A. If the Southern Express Company chooses to go to that expense themselves when the Iron Mountain express department offers to do it for them, I cannot see that they would be entitled to any reduction.

Q. That would be simply because, in your view, the Southern Express Company, if it chose to do the other thing, did it unnecessarily?

A. Yes, sir.

Q. And that is the only ground of your opinion; not that they had no right to do it, but that they chose to do it; if they did not accept the service which the Iron Mountain railroad express department offered them, then they should not be allowed any discount for what they chose to do for themselves?

A. No, sir; I should say not; if we were to put a messenger on to take charge of our freight I should not expect them to make any reduction.

Q. Pra-tically, the Pacific Express Company, under the present arrangement, does business with the Iron Mountain railroad, except in the amount paid, as any other shipper does?

A. They handle our business between here and Texarkana.

Q. Exactly as they handle that of any other individual shipper, the difference being that you have a special arrangement for rates?

A. We divide the earnings on the basis of the local rates.

Q. These special arrangements for rates are better to you than they would be to me as an individual shipper, are they not?

A. No; not if you were sending goods to Houston; you would get it at the same rate we do.

Q. How do you know?

1192 A. You can put the goods in their hands to be delivered at Houston by the agencies they may select; they will ship the same.

Q. You don't put your goods in their hands to be delivered at Houston?

A. No; I said by the agency they might select.

Q. Suppose I go, as an individual, and want to send a parcel from here to Houston by the Iron Mountain express department, would I get the same rates that they give the Pacific?

A. Precisely.

Q. You don't make any money, then, at all, do you, from here to Houston? I am not talking about Texarkana. If I could get the same rates to Houston that you do, where is your profit?

A. What I mean is, they would carry at the tariff rates to Houston.

Q. But still you said, if I wanted to send a parcel from here to Houston over the Iron Mountain, that I could get exactly the same rates and rebates you do for the Pacific?

A. Between here and Texarkana.

Q. I am talking about between here and Houston. I go as an individual shipper, and want to ship from here, over the Iron Mountain railroad, a bill, say, from here to Houston; I cannot get the same rates for that that you do, can I?

A. You can between here and Texarkana.

Q. But not between here and Houston?

A. No; because we make our own charge from Texarkana to Houston.

Q. And, practically, there is a discrimination made by the Iron Mountain railroad express department against me as an individual shipper and in your favor on the goods billed through from here to Houston, isn't there?

A. No; I don't think there is.

1193 Q. Coming to the other matter, which I think you have answered, but to make it clear I will ask it again: If the Southern Express Company wants to ship goods from here to Houston, over the line of the Iron Mountain railway, the express company billing them in their own custody through, they would have to pay more than you pay, wouldn't they, to the Iron Mountain railroad?

A. Well, that is a matter between the Southern Express and the Iron Mountain railroad.

Q. As a fact, isn't it so?

A. I cannot state that of my own knowledge.

Q. Don't you know the rates of the Iron Mountain railroad are $2.50 from here to Texarkana?

A. Yes, sir.

Q. And that the Southern Express Company don't get any reduction on that rate from here to Houston?

A. I cannot say of my own knowledge.

Q. Have you not been told by the employés of the Iron Mountain railroad that that is so?

A. Yes, sir.

Q. Mr. Aikin has told you?

A. Yes, sir; he told me the charges to the Southern Express Company were $2.50 a hundred.

Q. How did he happen to tell you that?

A. I don't know.

Q. Wasn't that in showing you in your arrangement how you could beat the Southern Express Company, and get advantage of them?

A. No; that was long before we thought of going to Texas at all.

Q. It was not explained to you, as part of the talk, when you made your arrangements for the lesser rates?

A. No, sir.

Q. I will ask if you can tell me how long it takes a messenger to run from here to Texarkana and back again, allowing for proper rest and refreshments, according to the usage of expressmen? From the time he leaves here until he leaves again, I suppose, would be a fair method of computing it?

1194 A. It takes twenty-four hours, I believe, from here to Texarkana, and a man should have twelve hours' rest before he comes back—at least that much.

Q. More, usually, don't he?

A. Well, I think they give them that; sometimes they have their lay-off, as they call it, perhaps all at one end, and go through and back.

Q. Is it not more usually twenty-four than twelve on the long run?

A. They lay over more than that here.

Q. And it takes twenty-four to go and twenty-four to come, and they lay over there twelve to twenty-four hours; now, how much more?

A. If they only laid over there twelve hours, I should think they ought to lay over here longer.

Q. About five days for the round trip from here to Texarkana, and taking the necessary rest?

A. Yes, sir.

Q. On another subject, now. If I understood you the other day, you stated a railroad express could not be conducted with the same convenience, advantage, and economy of time over short routes?

A. No, sir; it cannot be conducted as cheaply over a short route and small business as it can for a long route and greater business.

Q. Nor could it be conducted so cheaply, could it?

A. That is what I said; it could not be.

Q. Nor so rapidly; there would be delays on a short route for rebilling and transferring, wouldn't there?

A. That would depend whether they had arrangement for through billing.

Q. We are speaking of a railroad express doing business over its own line only with such connections as it may be able to make, and I understand you to say over a short line it could not be done so well?

A. Not so cheaply.

Q. And, therefore, not so well over a short line of railroad
1195 as a separately organized express company doing a general
express business over all lines with which it does business?

A. Not if they have to transfer at the termini of the road—transfer and rebill.

Q. Then, if I understand you, as you multiply transfers and billings you would increase the cost and delay?

A. Yes, sir.

Q. And as those are the elements to be taken into consideration, they make a separate railroad express department less desirable than the through express business of a separately organized company?

A. Yes; unless they are connected with other railroad expresses and have arrangement for through billing, and then it can be done just as well.

Q. Unless they are able to perfect their business so as to make no difference between that and a through express company?

A. Yes, sir.

Q. I think you also stated, before the adjournment the other day, that it was a little more convenient and *and* a little cheaper, perhaps—I am not sure I am representing you properly, and I would like to be corrected if I am wrong—to do business by a separately organized express company than by a railroad company, even at the best?

A. No; I don't know that I said that.

Q. Will you please state what your view is about that? I so understood you.

A. Please repeat your question again.

Q. As between an express business done by a separately organized express company, such as the Pacific, over all the lines on which it does business, and an express business done upon a series of separate railroad expresses, however well connected, is not the advantage in favor of the one organized company?

A. There might be some advantages.

Q. Will you tell what they are?

A. I don't know that I could state; but there would be an
1196 advantage in fact; in place of having an auditing department for each road it could all be done at one general office.

Q. In place of having a separate staff of express officers connected with each road, there would be one staff connected with one company; wouldn't that be an advantage?

A. Yes.

Q. In place of having diverse heads, one management; wouldn't that be an advantage?

A. Something of an advantage.

Q. And these and other advantages perhaps existing, wouldn't they all appear finally in the accounts of the company, and show that the one organized express company could do a business cheaper than the many separate railroad express companies?

A. They perhaps could do business cheaper to themselves.

Q. And, therefore, if they chose, cheaper to the public, could they not?

A. Well, I don't know as to that, because a railroad express what they would lose in one way, they might gain in another. They would gain the profits of the express company in operating over the road.

Q. Whatever profit was gained would go to the railroad company, in addition to its general traffic profit, instead of to the express company which was doing that business alone?

A. Yes, sir.

Q. Again, wouldn't the public be better advantaged by the competition which would arise for the benefit of the public, when the business is done by separately organized express companies?

A. No, sir; I think there is a greater competition now than there has been to express companies.

Q. Well, that is to the advantage of the public, isn't it?

A. Well, they think it is.

1197 Q. Does not competition usually bring better service at lower rates in every department of business?

A. Yes, sir.

Q. Is the express business an exception?

A. No; I don't think it is.

Q. Let me bring your mind to another point in that connection, or to the same point a little closer; speaking of the Iron Mountain & Southern railway doing its own express business through its own express department, mind you now, it owns the railroad, and it owns the express department, isn't it likely that that business will cost more to the public than if it was done by a separate organization over the same line, which had no direct connection and union with the railroad company, and had to deal with it as a stranger?

A. That it would cost them more to do the business?

Q. Isn't it likely to cost the public less if done by a separate organization—making the best terms it could with the Iron Mountain & Southern Railway Company, than if done by the Iron Mountain express department, making such terms as it might with the Iron Mountain & Southern Railway Company?

A. Well, experience don't prove that to be the case.

Q. Experience proves what, in that respect?

A. The rates are very much less, I understand, than they have ever been before.

Q. Are not the rates on everything less than they have ever been before in the same way?

A. Not to the same extent.

Q. Why, then, is it so desirable to go over the railroad express company if it is cheaper by a separately organized express?

A. Well, you don't perhaps understand the organization of our express.

Q. I may not, sir; and I want to know?

1198 A. The railroads are directly interested in the earnings of the express.

Q. The railroads are directly interested?

A. Yes, sir; the Union Pacific and Wabash, and the Missouri

Pacific. The earnings are divided between those three organizations.

Q. Do you mean to say that the three railroad companies are the three stockholders in the Pacific Express Company?

A. They own and control the Pacific Express Company.

Q. You don't still answer the question; perhaps you don't understand; they own a proportion of the stock, do they?

A. Yes, sir.

Q. Do they own it all?

A. They own—there is no dividend to anybody but those three railroads.

Q. They have no co-stockholders?

A. No, sir.

Q. So that the Missouri Pacific, the Wabash, and the Union Pacific are really the sole owners of the Pacific Express?

A. Yes, sir.

Q. Each of them before had a separate express department, had it?

A. The Missouri Pacific had not.

Q. But the Wabash and the Union Pacific did?

A. Yes, sir.

Q. And the opinion was it would be advantageous to have a separate organization that would run over all the three railroads rather than to have for each of the roads an express department; and so they organized this company, and now run it over their line; is that it?

A. Yes; they thought they could do the business cheaper and perhaps better.

Q. And they are doing it cheaper, are they not?

A. Well, that I can't say.

Q. Well, what is the understanding?

1199 A. I don't know that it is done much cheaper than it was done before.

Q. But it is done some cheaper?

A. Well, I don't—I have not enough experience with a railroad express to know how cheaply it was done.

Q. Oh! you haven't enough experience with railroad expresses, perhaps, to say how cheap it could be done?

A. No; I can't say.

Q. In fact, you have been with the railroad express so short a time, if I understand, that you can't say much about it?

A. I can't say much about it.

Q. Your observation of railroad expresses is not such, independent of what you have experienced yourself, as to enable you to speak on that subject?

A. Only from what I heard and from my observation, I think that a railroad express could be run as cheaply as any other express.

Q. But from your experience it has not been, has it?

A. I didn't say that.

Q. I understand they abandoned the railroad organization and took the express organization because they could run it cheaper and better?

A. That was done for our own convenience.

Q. Well, you found it would be better and cheaper to do it that way?

A. There were other objects in view in making that change.

Q. What were they?

A. We wished to operate roads that were not belonging to those three lines.

Q. And you could not so well operate them by a railroad express as you could by one united general express company?

A. We contract with roads not interested in the express
1200 company, and pay them the same as any of the old express
companies, and make the best contracts we can.

Q. Isn't it a fact that you are striking at a general express business over all the railroads in the country that you might do business on?

A. Such as we think we can make it pay on.

Q. You find you could do that better with one organization than with these separate railroad department expresses; isn't that it?

A. I think the Union Pacific railroad earned as much money with their own express department as they have since it was organized in the express company.

Q. You observe that you don't answer my question.

A. What was your question?

(Question repeated.) You find that you could do that better with one organization than with those separate railroad department expresses; isn't that it; that is, this general express business all over the country and with railroads not interested in your Pacific Express Company?

A. I think we can make more money for the railroads in that way.

Q. But, if you chose, you could do it at less expense to the public; that is, if you chose to give this difference in rate to the public, you could, instead of increasing your profits by it?

A. If we chose to give it to the public, we could.

Q. Now, this Iron Mountain & Southern express department is an organization which, though it belongs to the Iron Mountain & Southern Railroad Company, and works for its benefit—that is a separate organization, isn't it?

A. I don't know anything about that.

Q. Don't you do business with it?

A. I do business with it same as anybody.

Q. It has its managers?

A. Yes, sir.

1201 Q. And its superintendent, and clerks, and messengers, and
agents, and auditor, and treasurer, hasn't it; don't you understand it to be a separate organization?

A. It is a separate department.

Q. A separate department, organized within the Iron Mountain & Southern railway; a general organization, with men charged with the express business and not having any direct connection, otherwise, with the workings of the railroad company?

A. I believe that is the case.

Q. Was not that the case with this on the Union Pacific?

A. Not altogether; the treasurer was also treasurer of the Union Pacific.

Q. But he exercised separate functions?

A. Yes, sir.

Q. So, practically, it was a separate organization, distinct from the organization of the railroad company, though belonging to it; wasn't it?

A. Well, it was not as distinct on that road, I understand, as this is from this.

Q. What is your arrangement with the Iron Mountain & Southern railway and its express department for the Pacific Express Company concerning the charges to be made for carrying money?

A. They get their pro rata of whatever it earns; at least that I suppose will be the arrangement, but I tell you we have no definite arrangement made as yet.

Q. But you expect to make an arrangement of that sort?

A. Yes, sir.

Q. Do you know what that pro rata is?

A. If their local tariff was $1.00, and our local tariff $1.00, they would get one-half the earnings—fifty per cent. each.

Q. If their local tariff was $1.00 and your local tariff was $1.00 they would get how much?

1202 A. Fifty per cent. of the earnings; if the two local rates were $1.00 each, and all the local rates were $1.00, and the through rate $1.50, each one would be entitled to seventy-five cents.

Q. What arrangements, if any, or what custom have you, with regard to jewelry and packages called valuable packages; are they put on the money bills?

A. Yes, sir.

Q. Deal with as if they were money?

A. Those are the instructions.

Q. That is the practice?

A. Yes, sir.

Q. So that Col. Broadhead's diamond pin and my silver watch would go on the money bill as money?

A. We would endeavor to have it so.

Q. That is the method adopted now?

A. Yes, sir.

Q. Some of your offices are united are they not, Mr. Fuller; the Pacific and Iron Mountain & Southern railway offices?

A. Yes, sir; we have joint offices here and at Texarkana.

Q. What is your arrangement about that, sir?

A. Pro-rating the expenses on the basis of the business done by each.

Q. All expenses?

A. All of the expenses appertaining to the expenses of the office.

Q. Including salaries of officers?

A. Salaries of agents, not of superintendents.

Q. Salaries of agents? How do you mean, Mr. Fuller; do you mean the route agents or the local agents?

A. The local agent. One agent acts for the Pacific, the Ohio & Mississippi, and Iron Mountain & Southern Railway Company.

Q. The one at Texarkana?

A. The one at Texarkana acts for the Pacific and Iron Mountain Express Company.

1203 Q. Not pro-rating any other salaries except the local agents?

A. The local agents and the expenses of doing the business here in the city.

Q. Would that include auditor's salary?

A. No, sir.

Q. Treasurer's salary?

A. No, sir.

Q. Superintendent's salary?

A. No, sir.

Q. Manager's salary?

A. No, sir.

Q. Route agent's salary?

A. Nothing except the business, the expenses appertaining to the office here; no salaries outside the city.

Q. Does that include wagons, horses, and drivers of wagons?

A. Yes, sir.

Q. And all the agencies for collecting and distributing freight?

A. Yes, sir.

Q. Pretty close partnership contemplated and actually existing, isn't it?

A. What is that?

Q. A pretty close partnership contemplated and actually existing between the Pacific and Iron Mountain railway, isn't it?

A. No more than has been practiced for years between the express companies.

Q. I am not objecting to it; I only want to know the fact; it is a pretty close partnership, isn't it?

A. Simply to reduce expenses.

Q. I don't remember whether the matter was brought out in your testimony or in Col. Morsman's; whether you or he spoke of the fact that between a certain point of time the Adams Express Company did not extend its line west of the Missouri river.

A. I think that was Col. Morsman's testimony.

1204 Q. Do you know anything on that subject?

A. I know that they did not extend their lines west of the Missouri river some years ago.

Q. But now they are doing it?

A. Now they are doing it.

Q. Don't you know so soon as the facilities for doing it were open they did it?

A. No, sir; during the time Wells, Fargo & Co. run their express east of the mountains they occupied all the territory west of the Missouri river.

Q. That was by a general arrangement among express companies?

A. Yes.

Q. And by the terms of that arrangement they were forbidden to enter that section, were they not, and agreed not to?

A. They did agree not to.

Q. And as soon as that agreement was removed, and there were practical lines for them, they went into them, didn't they?

A. Yes, sir; I suppose that was the arrangement.

Q. And so they were kept out of that territory, not by an unwillingness to go into it, but by an agreement not to enter it; in making a general arrangement among all of the express companies of the country?

A. Yes, sir.

Q. Be kind enough to tell me what railroads the Pacific Express Company contracts with and works over besides the roads in which those who own it are interested?

A. We have now the Texas & Pacific, the International & Great Northern, the Missouri, Kansas & Texas, the divisions of the Missouri Pacific, part of the Wabash line, not included in that division, that we pay for separately.

Q. Are not those railroads—are not the same people who
1205 own the three railroads, and own the Pacific Express, interested in the Missouri, Kansas & Texas and Wabash?

A. Yes; but part of those lines we pay for out and out, and charge it up to general expenses. They are not included in the division, lines that have been opened since this agreement was made.

Q. Have you named all?

A. No, sir.

Q. Part of these lines you say you have paid for out and out?

A. That is, we pay by contract.

Q. Which one, for instance?

A. We pay the Missouri, Kansas & Texas.

Q. You have a contract between the Pacific Express Company and the Missouri, Kansas & Texas direct, as if you were strangers and there was no general interest?

A. Yes, sir.

Q. What is that contract, sir?

A. We pay $40.00 a day from Sedalia to Hannibal, between Sedalia and Hannibal, and I think it is $225.00 a day between Sedalia and Denison, including the Neosho Valley Branch.

Q. Does that include messengers' fares?

A. No, sir; there is half fare for messengers besides.

Q. Half fare, or regular passenger rates, or at some discount rate?

A. I think the contract reads one-half passenger fare.

Q. Do you know whether that is one-half passenger fare for just what the traveling public would have to pay, or one-half the same at a reduced rate—1500 or 1000-mile ticket?

A. It is understood to be once and a half the regular passenger fare.

Q. Once and a half?

A. No; one-half the regular passenger fare.

1206 Q. What do you get for that $40.00 rate; for instance, from Sedalia to Hannibal—how much space?

A. I think we have the privilege of 4,000 pounds of through freight every day.

Q. Both ways?

A. Four thousand in all in the twenty-four hours.

Q. On all trains?

A. On all trains on that division.

Q. What is the distance from Sedalia to Hannibal?

A. I am not positive, but I think it is 142 miles.

Q. And the other rate, what did you say it was, from Sedalia to Denison?

A. I think it is $225.

Q. What do you get for that—space or weight?

A. We get weight—so many thousand pounds; I don't recollect just what it is.

Q. Isn't it 5,000?

A. I think it is, but I am not sure.

Q. What is the distance from Sedalia to Denison?

A. Four hundred and thirty-four miles, I think.

Q. Can you tell me the distance over all the lines covered by that contract; it is more than that, isn't it?

A. More than 434?

Q. Yes.

A. Yes; that includes the branch from Parsons to Junction City.

Q. Can you tell the distance?

A. I don't recollect what that distance is.

Q. Can you say about what it is?

A. I should think somewhere from between 120 to 150 miles.

Q. That is to be added to the 434, for the daily rate of $225.00?

A. Yes, sir.

Q. Is anything else to be added—any other branch?

A. No, sir.

Q. Didn't the Pacific Express Company have a contract, at one time, by which jewelry parcels were exempt from all charge;
1207 I mean by which the earnings on such packages were not divided with the railroad company?

A. No, sir; not to my knowledge.

Q. You spoke the other day, in speaking of this accessorial business, of the services by men and horses at the *termini* in gathering and distributing freight, which seemed to be your understanding of the proper limit of that term as a service for which no extra charge was made; you could use it or not as you liked, but the compensation the railroad company expected to get from that was increased service—increased business?

A. Yes; that is my idea of it.

Q. Now, isn't it a fact, that though, as you supposed, they make no specific charge upon any specific service to me for hauling from one place to another, for taking it from my warehouse to the depot, or taking it from the depot to my warehouse—isn't it a fact that after all the expense of doing the business is ascertained, then the rates are fixed with a view to covering the expenses, and making the expected and desired profit; isn't that the fact?

A. I suppose all the expenses are taken into account.

Q. Isn't it, then, a fact that they do get a compensation direct in money from all who deal with them for this service of distributing and gathering up matter by men, wagons, and horses, as part of the general expenses?

A. No specific charge is made for that, and the same rates are charged whether there is that service or not.

Q. Precisely; but these expenses are included when you come to make the rate for the entire service everywhere, are they not?

A. No; I don't think they are.

Q. If the express company had no necessity to employ wagons and drivers for this service, and didn't buy and get and use them for that service, wouldn't it make a large diminution of their expenses?

1208 A. Yes; a large diminution of their business.

Q. Now, if it would make a large diminution of their business, if it did not require them to do it, wouldn't they be able to make a corresponding diminution in their charge if they wanted to?

A. No, sir; I don't think they could.

Q. You don't think if they cut off, say $100,000 a year for expenses in keeping wagons, horses, and men for the delivery and distribution of stuff, they would save $100,000 a year by it, if they could do the business as well without it?

A. If they could do the business, and as much of it.

Q. That is my question, if they cut off the expense of it and still do their business, they could do the business for less charge to the public, couldn't they?

A. Yes, sir.

Q. Isn't it a fact, as I asked before, the expenses to which they are put in the doing of their business in all these branches become the basis on which they make their charges to the public for the services rendered?

A. I suppose all the expenses are taken into account.

Q. And isn't that just as true of every part of the business as it is of the wagons and horses and delivery men?

A. I don't know as I get the question clearly in my mind.

Q. Isn't it just as true as applied to the messengers' salaries, to office rent, and to wages of route agents, and to every other expense of the business, as it is to the hiring of horses and wagons; that it is a part of the business, the general cost of which you ascertain, and it is a charge for service made on the basis of this cost?

A. I suppose that would be the proper way to estimate the cost, but I don't think these things were taken into consideration.

1209 Q. You think they don't estimate at all the cost of horses, wagons, and delivery men, in ascertaining what it costs them to do business?

A. It would be impossible for us to have an estimate of what the cost of doing business would be in St. Louis.

Q. But you know what your outlay is, don't you, your capital, outlay, and current expenses, don't you?

A. Yes, sir.

Q. And you know at the end of the year what you have earned?

A. What we have earned, and what it has cost.

Q. Then you divide the profits?

A. Yes, sir.

Q. Now, isn't that exactly what I said, that the cost goes in and then the rate is fixed on that cost, coming from whatever quarter it does?

A. The rate is made first, and the cost is ascertained afterwards.

Q. That is based on your experience, running through so many years?

A. Partly.

Q. And in part because you have to be governed by the rates established by other companies?

A. Yes, sir.

Q. So, whatever it costs you, you cannot charge more than other people charge in the same business for the same service?

A. No, sir.

Q. Then it is not a question of what you could charge, but how cheap you could do it to make fortunes for yourselves; so you were limited in the amount you could charge, were you not, by the prevailing rates?

A. Yes; we were limited in that respect.

Q. Then you had to work to your rate, and your profit would come between that and what it would cost you to do the business, wouldn't it?

A. Yes, sir.

1210 A. I wish to ask you another matter; if all the express matter received by any express company in a large city, say like St. Louis or Chicago, was brought by individual shippers to the express office, wouldn't a few additional receiving clerks cover all the expenses that would result from this mode of doing the business?

A. No, sir; I don't think it would.

Q. What would be the difference?

A. You mean the collecting, and all the matter would be delivered to the express companies, and all the matter called for at the consignees?

Q. Yes; wouldn't a few additional receiving clerks employed, with sufficient warehouse room, be all that would be added to the expense of the company; I am assuming that the business could be done that way?

A. Yes, with additional clerk hire and additional room it could be done; but I apprehend the cost would be much more that way than to do it as we now do it.

Q. Why so?

A. It would take so much more room and so many more clerks.

Q. Don't all of it go into one warehouse anyhow?

A. No, sir.

Q. Don't you have a warehouse now large enough to receive all your business coming and going anyhow?

A. A great deal of it don't go in the warehouses at all.

Q. How then?

A. Taken from the cars and delivered to the consignees.

Q. Couldn't that all be done by those who delivered and received also; couldn't they come and take it from the cars and deliver it to the cars?

A. One wagon now takes freight for from a dozen to twenty consignees; if a dozen or twenty consignees would come all at once to get their goods, it would take a dozen to twenty men to wait on them.

1211 Q. If they all have to have their goods at the same place and instant, yes; but is that found to be so in practice with railroad men; don't they come and wait their turn?

A. That business is done practically the same as the express; the transfer wagons take it and deliver it the same way.

Q. But they represent just as many shippers as they are, don't they; each man hires his transfer wagon to come, and the team belongs to one company or to another, or to himself?

A. Then their business is quite different from ours; there are not so many small packages; it is a larger bulk.

Q. Not so many large sacks for you as for them?

A. No.

Q. Yours is easier handled than theirs; are they not quicker handled?

A. Quicker handled.

Q. Now, if the express matter received by an express company in a large city like St. Louis and Chicago—suppose the business now done that way was brought by the individual shippers to the express office, wouldn't a few additional receiving clerks cover the expenses required?

A. I will not say a few additional ones.

Q. Well, then, some additional ones.

A. A great number would.

Q. Do you think more increase would come in the way of paying additional hire than the whole amount now invested in horses, wagons, and the keeping of the horses, and repairs of the wagons, and salaries of those who have charge of them?

A. I don't think it would be practicable to do the business in that way.

Q. No, I know you don't think it would; but if it could be done?

A. Well, if it could be done it could be—that is all.

1212 Q. But without additional expense except for additional clerk hire; that would be the thing to be increased, wouldn't it?

A. Additional clerk hire and additional room.

Q. I thought we had gone over that. You have to have now room to receive all that comes, don't you, except what goes direct into the car?

A. Yes, sir.

Q. Would you have to have anything else different but room for all that came, except what would go direct to the car?

A. Yes; have to have a great deal more room.

Q. Why?

A. Our freight comes in now at night, and in the morning we haul it out; if we wait for the consignees to come and get it, the freight would accumulate so that it would cover us up.

Q. You would have to have simply additional space somewhere for storage, and the additional cost for rent, and the additional cost for clerk hire, would be the substitute for the cost of wagons, horses, drivers, etc.?

A. Yes; whatever that would be.

Q. Now, I will ask you if I am right, in my understanding of your views, that in point of fact in all the places where goods are received in large quantities from abroad, or for shipment by express companies, the service of wagons, horses, and drivers to gather up and distribute is an essential part, accessorial or other, of the express business.

A. In all large cities.

Q. Cannot be dispensed with at all, can it?

A. No, sir.

Q. No more than the custody of goods by messengers in transit, could it?

A. No, sir.

Q. No more than clerk hire to enable them to do the express business, could it?

A. No.

1213 Q. It is one of the accessories which is essential to the doing of business at all, isn't it?

A. It is in large cities.

Q. And whenever the business grows to be large in any place, then comes with it this necessity?

A. Yes, sir.

Q. It is only where the business is very small that it is not needed?

A. Where the business is very small, and no increase of business by putting it on.

Q. In your experience as an expressman, which has been very long and very various, have you ever known a messenger of an express company to be required by the railroad company to pay freight for carrying his chair?

(Counsel for the defendant objected to the question, as irrelevant and incompetent.)

A. No, sir; I don't know anything about it.

Q. Did you ever hear of such a thing being required?

A. No, sir; never had any occasion.

Q. You have run as a messenger?

A. Yes, sir.

Q. You have had charge of a messenger route; you would know it if such custom had prevailed, wouldn't you?

A. It has not been the custom that I know of.

Q. You never heard of such a thing; did you ever know a messenger to be required by a railroad company on which his route was to pay for freight on his box containing his necessary stationery, bills, etc.?

A. No, sir; never knew anything about it.

Q. You never heard of such a thing as that?

A. No, sir.

Q. Is that customary?

A. No, sir; I don't think it is.

1214 Q. Did you ever know a messenger to be required to pay freight on his overcoat if he didn't keep it on his body all the time?

A. No, sir.

Q. Did you ever know of a messenger being required to pay freight on his wash-basin in the discharge of his duty?

A. No, sir; I don't know that I ever saw a messenger have a wash-basin, that is, they did not when I was running as messenger.

Q. You have never heard of demands like those?

A. No, sir.

Q. What would be your judgment as an expressman of such a charge; would you or not think it an exceedingly improper proceeding?

(Objected to, as incompetent and irrelevant by defendant's counsel.)

A. I wouldn't charge a messenger; if it came out of the messenger, I wouldn't charge him.

Q. Would you charge anybody, sir?

A. Well, that would depend on circumstances, whether I wanted to get even or not.

Q. Would you not consider it an oppressive charge to be made by any one?

A. Well, I should not make such a charge myself.

Q. Well, why wouldn't you make it yourself?

A. Well, I don't know that I know why I would not; but I would not.

Q. Would it be because you would think it oppressive and improper?

(Defendant's counsel objected.)

A. I said I wouldn't do it myself.

Q. Now, I will ask you—I suppose Col. Broadhead will object, but I think it is proper—as a person familiar for many years, acting in so many capacities in the express business, and knowing what is expected and reasonable to be done, wouldn't such conduct
1215 in allowing such charges to be made indicate that a railroad

company had the purpose of driving the express company from its line?

(Objected to by defendant's counsel, who objects to the witness answering the question, and instructs him that he is not bound to answer it, and hopes that he will stand on his rights.)

A. You are asking me questions that my experience has never raised.

Col. BROADHEAD: I advise you as an attorney; you are not bound to answer it.

Q. Your experience does not enable you to estimate conduct like that; is that what you mean?
A. I never had any experience in that direction.

Re-examination by Col. BROADHEAD:

Q. You say, Mr. Fuller, that in making rates for transportation, that you do not include the charges and costs of the employment of wagons, drivers, and horses for getting freights to the depot and gathering them up from the different shippers?
A. Well, I never took that into account in making tariffs.
Q. About what per cent. of the whole, as you undertake to estimate—what per cent. of the whole cost of the express business would this service bear?

Judge BRECKINRIDGE: Do you mean now as applied to any one place, or as to all the services of an express company everywhere?
Col. BROADHEAD: All the services.
WITNESS: Well, I can't tell as to all the wagon service we have; but I could tell pretty nearly what it is here.

Q. I mean what you spoke of the other day without defining it—what you spoke of as accessorial services?
1216 A. The wagon service; we did a business here last year of nearly $365,000; and our wagon service——

Judge BRECKINRIDGE: Do you mean gross or net?
WITNESS: That is gross business, in and out, forwarding and receiving.

Q. In St. Louis?
A. In St. Louis, and our wagon service amounts to about $2,100 a month.
Q. Well, what per cent. would that be of the whole?
A. Somewhere between five and seven per cent.
Q. And you consider that the cost is counterbalanced by the increased business that is done in consequence of it?
A. Yes, sir.
Q. You say the profits of the business of the Pacific Express are divided amongst three railroads, principally?
A. Yes, sir.
Q. That, I suppose, is because the same parties are interested in the three different railroads?

A. Yes, sir.

Q. What difference is there, practically, between that business being done by a separate organization called the Pacific Express Company, and by agents appointed by the owners of the three different railroads?

A. Practically, no difference.

Q. Isn't it substantially, really, and in fact an express business done by those three railroads for their own account?

A. Yes, sir.

Q. What connections have you east of St. Louis; what roads besides the Wabash?

A. That is all, the Wabash—that is of our own lines; we have through billing arrangements with the Ohio & Mississippi and Baltimore & Ohio.

1217 Q. Could those arrangements be made if you were not a separate company, but simply the agents of those three different railroads?

A. Yes, sir.

Q. Just as well?

A. Just as well.

Q. Mr. Breckinridge asked you about the business done over the Iron Mountain & Southern railroad by your company, on through bills from St. Louis to Houston; you say the Iron Mountain railroad prorates with you on packages to be sent through to that point?

A. Yes, sir; I said I expected that would be the arrangement.

Q. Well, is it substantially the same arrangement that all express companies, and all railroads doing an express business, have with connecting lines?

A. Yes, sir.

Q. Is it not usual in matters of transportation, whether it be in the transportation of express matter or in the transportation of ordinary freight, that the through rates are less than the local rates?

A. Yes, sir.

Q. And that the sending and forwarding companies prorate with each other, according to their respective distances?

A. Either on the basis of distance, or on the basis of local rates; we prorate usually on the basis of local rates, but the railroads usually put it, I think, on a mileage basis.

Q. A rate from here to Texarkana, on the Iron Mountain railroad, would be called a local rate?

A. Yes, sir.

Q. Suppose the Southern Express Company were to come to the Pacific Express and ask a shipment of its articles through from St. Louis to Houston, over the line of the Iron Mountain railroad, what rate would be charged the Southern Express Company by the Pacific and Iron Mountain Railroad Company, from here to Houston?

A. I think the rate is $4.00 through.

1218 Q. In other words, you charge them the same rates that you would charge others, wouldn't you?

A. Yes, sir.

Q. If they made a through shipment you would charge the through rates, and to make a local shipment they expect to pay local rates?

A. Yes, sir.

Q. But the Southern Express Company, I suppose, is not, as far as you are informed, disposed to ship over the Iron Mountain railroad unless it is compelled to do it?

(Plaintiff's counsel objects to the question, as assuming what the witness has not said, and suggests to the witness he is not required to answer.)

Q. Do you know whether any of the agents of the Southern Express Company have said they would not ship articles over the Iron Mountain railroad unless they were compelled to do it?

A. Mr. Campbell, superintendent of the Texas Express Company, told me——

(Complainant's counsel objects, as incompetent.)

Q. I am only asking for what the agents of the Southern Express Company said.

A. Mr. Campbell is the agent of the Southern Express Company, I understand.

Judge Breckinridge: Do you know that fact; I am told it is a separate organization.

Witness: They are operating in Texas under a contract made with the Southern Express Company.

Judge Breckinridge: I object to any statement being made as to what Mr. Campbell said.

Col. Broadhead: The witness says Mr. Campbell is the agent of the Southern Express Company.

Judge Breckinridge: No; he says Mr. Campbell is the agent of the Texas Express Company, and then he went on to say that it was his understanding there was some arrangement that he was
1219 practically an agent of the Southern Express Company, and I object to what Mr. Campbell says.

Col. Broadhead: If he is agent of the Southern Express Company he can answer; the witness can say whether he knows; it is not for you or the agent of the Southern Express Company to undertake to contradict him here.

Q. If you know him to be the agent of the Southern Express Company, you can answer the question.

A. Well, I don't know him to be.

Q. In answer to a question put by Judge Breckinridge I understood you to say a short-line railroad cannot do an express business as cheaply as a long line of road. That would depend on whether they could make an arrangement for reshipment, and what these arrangements were, wouldn't it?

A. Yes; and the greater volume of the business of course the less the proportion of the expenses would be.

Q. Some interrogatory was made of you in regard to shipments over the Iron Mountain railroad of the increased rate for local shipments; Judge Breckinridge asked you whether there was not a discrimination against persons making what you call local shipments. I will ask you, as I asked a while ago, if that is not usual in all lines of transportation?

A. The local rates are always proportionately higher than through rates.

Q. You don't call that discrimination?

A. No, sir.

Q. So that if the Southern Express Company were charged $2.50 from here to Texarkana, and on a through shipment from here to Houston the person who made the through shipment was only charged $2.25, that would be no discrimination against the Southern Express Company, would it?

A. No, sir; that is charging them the same as they do anybody else.

1220 Q. And you would ship their express matter at the same rate you would any other express matter if it was delivered to you for shipment?

A. Yes, sir.

Q. If you shipped an article from here to Houston or from here to New York, what kind of a receipt would you give, or do you give a regular bill of lading?

A. We have our own forms of receipt.

Q. For all shipments East or West or North or South?

A. Yes, sir.

Q. Well, of course, it is not competent to speak of the paper because we can produce it, but I will ask the question: Is your receipt for through shipment or for shipments by forwarding by other routes?

Judge BRECKINRIDGE: You will produce the paper on the trial, will you?

Col. BROADHEAD: Yes.

WITNESS: Our receipts read: We agree to carry to the nearest point reached by this company to destination only.

Q. Over your own road?

A. Yes, sir.

Q. That would mean, from here East, over the Wabash and terminations?

A. Yes; to the nearest point we reach to destination.

Q. How would it be from here to Houston, Texas?

A. We would give a through receipt for Houston, because we reach that point.

Recross-examination by Judge BRECKINRIDGE:

Q. Will you do us the favor to give to the notary those receipts of which you have spoken, and I will request him to mark them as "exhibits" to your answer?

A. Yes, sir.

1221 Q. These receipts of which you have spoken are designed to enable an express company to transfer the matter at the end of its route to another company to complete the carriage, are they not?

A. I suppose it was done to limit the liability.

Q. To authorize them to transfer it, and to be responsible only to the end of their own agreed route?

A. Yes, sir.

Q. In that respect are not all the express companies' receipts substantially alike?

A. Very nearly.

Q. You accomplish the same purpose?

A. Yes, sir.

Q. In different phraseology, perhaps?

A. Yes, sir.

Q. You have said that if the Southern Express Company came to the Pacific Express Company to send for it matter from here to Houston by its route that it would charge it this $4.00 rate?

A. Yes, sir; we would charge it to Houston just the same.

Q. That is, you would serve the Southern Express Company as you would me or any other patron if it came to you to employ you?

A. Yes, sir.

Q. But it is a competing express company, doing precisely the same business, and competing for it between here and Houston, is it not?

A. Yes, sir.

Q. If it employed you as the agency it would lose straightway all possible profit on that shipment, wouldn't it; it would pay you all it could make on the competition, wouldn't it?

A. Yes, sir; if it paid us our regular rate on everything shipped.

Q. If you established for the general public a $4.00 rate from here to Houston, and the Southern Express Company employed you to carry this matter for that rate, it could not compete with you for that business?

1222 A. Not in heavy freight.

Q. Could it for anything, if it paid you the regular rate charged to the public?

A. Yes; if you were to put forty or fifty small packages together on which you got fifty cents.

Q. If it packed parcels it might make a margin that way; but that is the only way?

A. Yes, sir.

Q. That would be rather a meager allowance for an express company to make a profit, wouldn't it?

A. It would depend on the extent of the business; if the business was extensive enough, and it would have a package business enough, that would be good enough.

Q. Now, on the question of discrimination: You have a through route from here to Houston as a result of your arrangement with the Iron Mountain railroad—from here over the Iron Mountain railroad a route to Texarkana, and from there to Houston by other arrangements provided by you?

A. Yes, sir.

Q. So you have a through-rate from here to Houston of $4.00, of which you pay $2.00 to the Iron Mountain Railway Express Company?

A. We pay whatever it is; we pay their proportion.

Q. I understand you paid them $2.00?

A. Both on freight and money.

Q. We will assume the local rate over the Iron Mountain railroad from here to Texarkana on 100 pounds of freight is $2.50, and the local rate over your route from there to Houston is $2.50, and in that case your arrangement is to charge the rate of $4.00, of which $2.00 go to the Iron Mountain Railroad Company, and $2.00 to the Pacific Express.

A. Yes, sir.

Q. Now, the local rate being $2.50 from here to Texarkana, if the Southern Express Company pays $2.50 on a similar package going through from here to Houston and to Texarkana, over the 1223 Iron Mountain railroad, it pays just that much more for the same service to the Iron Mountain railroad, doesn't it?

A. It makes a local shipment of it.

Q. No matter what sort of a shipment it makes, it pays that much more, doesn't it—just half a dollar more than you do for the same service?

A. Yes, sir.

Q. Now, I am assuming a case where these rates prevail—the local $2.50 from here to Texarkana, and local $2.50 from there to Houston, and the through rate by the Pacific Express of $4.00 from here to Houston—I am assuming: Suppose the Southern Express Company bills through from here to Houston and sends its package over the Iron Mountain railroad of precisely the same weight and value, just as far as you do, to Texarkana, what other service is rendered to the Southern Express Company that is not rendered to you from here to Texarkana; what more does the Iron Mountain Express Company do for the Southern than for you?

A. It carries the Southern Express Company's packages at two and a half cents a pound, and it carries ours at one-half of their proportion.

Col. BROADHEAD: One-half the through rate?

WITNESS: No; it costs us a great deal more—the small packages.

Q. I am assuming the packages are the same weight and character.

A. On freight weighing 100 pounds or over, we would allow them $2.00 a hundred on that basis; that they were a $4.00 rate, where the two locals were $5.00.

Q. If the local rate applied to the Southern and the through reduced rate to you, isn't that a discrimination against the Southern, when precisely the same service is rendered to the one as to the other?

A. It is, on that class of freight.

Q. I am assuming it is the same class of freight and value;
1224 isn't that an exact discrimination against the Southern of just the difference between the local and through rate?

A. There is that difference of half a dollar a hundred.

Q. Now, what difference is there in the service rendered to the Pacific and the service rendered to the Southern Express Company by the Iron Mountain for this same package, of the same weight and of the same value, shipped by both companies through to Houston, and carried over the line of the Iron Mountain railroad to Texarkana?

A. On that one shipment there would be no difference in the service.

Q. Unless it happened that the Southern Express Company sent its own messenger in charge, and the Pacific sent its matter in charge of the Iron Mountain railroad express department's messenger; that would make a difference, wouldn't it?

A. No, sir; they would just as soon take it without a messenger as with.

Q. I know; but that would make a difference in the cost of the service?

A. If they chose to have that cost; yes.

Q. Exactly; but that would make a difference in what it cost the Iron Mountain Railroad Company to render the service to the Pacific over what it cost it to render the service to the Southern Express Company, wouldn't it?

A. Not a bit.

Q. You think the service of the messenger in the care and custody of the stuff, and the responsibility connected with it, would make no difference in the service rendered by the one to the other?

A. No; it wouldn't take any more messengers to carry all the freight than it does to carry their own.

Q. But there would be more responsibility and more care, wouldn't there. Suppose it was packed parcels or a half a million of
1225 money, would it involve any greater responsibility if they had it in charge than if the Southern Express Company had it in charge?

A. Yes; but I don't understand that you pay them anything for money.

Q. I am not speaking of that, sir; I don't know how that is now; I have understood there was. But suppose it was a package of half a million of money, wouldn't that make a difference, whether in the custody of the Southern Express Company or of the Iron Mountain Railroad Company?

A. It would be worth something to insure it.

Q. And, as far as there was that difference, it would be a difference of cost to the Iron Mountain Railroad Company for what it did for the Pacific over what it did for the Southern, wouldn't it?

A. If they became responsible for that package it would be worth more.

Q. If I understand your answers to Col. Broadhead, these three railroad companies which own the Pacific Express are practically doing an express business all over the country as far as they can go?

A. They take and receive matter for all points of the country.

Q. Can they make collections in New York?

A. They do it through other companies.

Q. They don't assume to be responsible for this work, do they?

A. They assume the same responsibility any express company does.

Q. Do they protest paper?

A. No, sir; we do not accept any paper for collection that is subject to protest.

Q. In that respect do you differ from other express companies?

A. Some of the express companies do it; we do not, because we don't think there is money enough in it to pay for the risk.

1226 Q. Does the United States Express Company do it?

A. They do it.

Q. Does the American Express Company do it?

A. I believe they do—always have.

Q. Does the Adams Express Company do it?

A. I think so.

Q. Does the Southern Express Company do it?

A. I don't know as to them.

Q. Do other express companies that you know of generally do it?

A. It is always done by the American and the United States, and I suppose the Adams; I don't know anything to the contrary.

Q. Does that, in your mind, make any difference at all in the facilities afforded by through express companies, and the ones afforded by a railroad express company?

A. No, sir.

Q. You do not think the public is convenienced or at all interested in having paper protested through the agency of express companies?

A. No, sir.

Q. Has the fact that the railroad companies who own the Pacific Express were unwilling to become responsible for the proper protesting of paper far beyond the line of their road had anything to do with their making this rule?

A. Not at all; we don't take paper to and from points on our own line for protest.

Q. In that respect you cannot compete with other express companies on the same line that do it?

A. Yes, sir; we can compete; we can do it if we want to, but we don't choose to do it.

Q. You cannot, because you don't do this service, which other express companies will render that you do not?

A. We would do it if——

Q. I don't speak of what you would do.

Col. Broadhead: Go on with your answer.

1227 Witness: We don't do it.

Q. You don't compete for that business?

A. We don't compete for that business.

Q. What kind of a receipt is given to the Pacific Express by the Iron Mountain railroad when forwarding their matter for them over the Iron Mountain railroad?

A. Their messengers receipt to us for the way-bills and freight.

Q. Is that a printed form?

A. It is a book of printed headings.

Q. Will you be kind enough, when you furnish the other receipts, to give us a sample of that and file it as an exhibit to your deposition?

A. Yes, sir.

Q. The fact is that in taking receipts of the express companies and giving those to the express companies, you use a different form from that which you use with the public; isn't that so?

A. Yes, sir.

Q. Will you bring also the form of receipt that you give to the public, so that we may see the difference?

A. You asked me to do that once before and I said I would do it.

Q. You spoke of $365,000, if I remember, as being the gross earnings of the Pacific last year?

A. The total business of this city.

Q. Now, be kind enough to tell me what this $365,000 is made up of?

A. It is made up of charges on our business forwarded and received.

Q. And does not it also cover charges earned elsewhere?

A. No, sir; charges on our own lines here on the amount that is to cover business of the Ohio & Mississippi Express, which is done in our office; the total business of their express and ours was in the neighborhood of $365,000.

1228 Q. During the whole of the year 1880?

A. Yes, sir.

Q. Now, does this $365,000 gross business of the Pacific and Ohio & Mississippi Express cover charges earned elsewhere than here?

A. On the line in and out of St. Louis; that is the net charges; it don't cover all we call advances on back charges.

Q. No advance on back charges?

A. No.

Q. Doesn't it cover also charges on your connecting lines?

A. No, sir.

Q. Suppose I was shipping a package by you from here to California, that you would take it to Ogden; does it include all that is paid from here to Ogden?

A. If it was prepaid it would include the whole.

Q. Then this $365,000, if it includes charges of that class, does not really show fairly the actual gross earnings of this office, because it includes something paid for connecting lines which you would part with?

A. No; to offset that there is matter received here that is prepaid, that is not taken into account.

Q. Do you wish to be understood that this $365,000, which you give as the gross earnings of the Ohio & Mississippi and Pacific Express, during 1880, at the St. Louis office?

A. That is the gross amount of charges in and out, forwarded and received.

Q. And you think what would be paid in a given case for Ogden would be balanced by what is paid at Ogden and not charged in here?

A. Yes.

Q. Do you mean that this is gross receipts and gross earnings of this office—$365,000?

A. It is the charges made up on matter coming here, and on matter going from here.

Q. By the Pacific and Ohio & Mississippi?

A. Yes, sir.

1229 Q. It is earnings elsewhere than in St. Louis?

A. Oh, yes; it is earnings all along the line.

Q. For instance, suppose a package came from Washington city here to the Ohio & Mississippi, for which you charge twenty-five cents; that would go in here?

A. Yes, sir.

Q. Coming from New York city over the Ohio & Mississippi—that would go in here?

A. Yes; if from New York city.

Q. Coming here from New Orleans; it would go in here?

A. No.

Q. On all your line, and the Ohio & Mississippi line everywhere, both going and coming, that is here?

A. Yes.

Q. Do you think that is a fair way of stating the gross earnings—the St. Louis earnings?

A. I didn't say gross earnings; I said charges on matter coming in and going out of St. Louis.

Q. Then this $365,000 is not gross earnings and receipts of this office, but is the gross amount charged and received on all matter received from other points and shipped to other points from here?

A. From this office; yes.

Q. Now, then, will you be kind enough to give me your estimate of what should be spoken of as gross earning of this office, for the purpose of reaching the percentage; how much less than of what you call gross earnings of these two offices here?

A. Well, I don't know the gross earnings; I don't know how it would be applied to one city.

Q. You can't do that?

A. The gross amount of money received.

Q. Then the attempt to apply the accessorial charges to those earnings would be delusive, wouldn't it, if you couldn't separate it and apply it to one city?

1230 A. The business—nine-tenths of the business might be forwarded; the expenses would apply on that business just as well as on the business received; the money would be collected elsewhere.

Q. But if $365,000 represents the gross receipts of the Ohio and Mississippi and the Pacific Express here during the year, and includes, as you have stated, all the money received here, no matter where earned on the line of their road, could you ascertain the percentage of the cost of this wagon service, as you have described it, by applying it to that $365,000?

A. That is the amount of charges that were on goods forwarded and received on the business that is handled here at St. Louis.

Q. That business, you said, that wagon service; you mean by that horses, wagons, and hire of drivers, and keeping of horses, and repairs of wagons and harness, and all that stable rent, and all was $2,100 a month?

A. Yes, sir.

Q. That is $25,200 a year, isn't it; what percentage is that about?

A. Well, I didn't figure it out, but I think somewhere between five and seven per cent.

Q. That don't include the prime cost of anything?

A. No, sir.

Q. Horses, wagons, and harness—but the cost of running them after you got them?

A. The cost of running, repairs, and renewals.

Q. Have you any means of giving to me the actual cost of the investment, sir, of wagons and horses?

A. No, sir; I don't know that I could get at it exactly, but I could pretty nearly.

Q. If you could in round numbers I would be glad to have you.

A. I can't do it from memory.

By Col. BROADHEAD: If you should transport a package of express
matter for the Southern Express Company from here to Houston, at
through rate, although the rate would be less than the charge
1231 from here to Texarkana, the public would be served as well
by your mode of transportation as if it was carried by the
Southern Express Company, wouldn't it?

A. Yes; I don't know of any reason why they would not be.

Q. While you would not be making any profits for the Southern Express Company, you would be doing the public a service just as well as the Southern Express Company would do it?

A. Yes, sir.

By Judge BRECKINRIDGE: That mode, however, would exclude possible profit over that part of the line for the Southern Express, wouldn't it?

A. Yes, sir; they would get no profit out of it.

Q. And would you deny the public whatever advantage arises from competition over a given route?

A. I don't apprehend there would be very much difference.

Q. Your view, as the representative of the Pacific Express Company is, it would not make much difference to the public if the Southern Express Company was excluded from the Iron Mountain railroad?

A. I don't think it would make any difference.

Q. It might be better for the Pacific, mightn't it?

A. It would give us more business, perhaps.

Q. And might be better for the Iron Mountain Railroad Company; but as far as the Southern Express Company is concerned it would hardly be advantageous to it; and, if I understand, the general effect of the arrangement made between the Pacific and the Iron Mountain Railroad Company is to the exclusion, or the tendency of it is to the exclusion of the Southern Express Company from this Iron Mountain railroad route?

(Objected to, as argumentative by defendant's counsel.)

A. That was not taken into consideration at all.

1232 Q. Looking out only for themselves?

A. We are all looking out for ourselves—the Adams Express Company itself, as well.

(Signature waived.)

(At this point an adjournment was had until to-morrow, April 13th, at 2 p. m.)

April 13th, 1881.

Parties met pursuant to adjournment, and a further adjournment was had till to-morrow, April 14th.

April 14th, 1881.

Parties again met, and adjourned until April 21st.

1233 St. Louis, *April* 21, 1881.

Parties met pursuant to adjournment.

Present: Messrs. Whitfield and Shepley, of counsel for complainant; Messrs. Broadhead and Thoroughman, for defendant.

R. C. Kerens, of lawful age, being produced, sworn, and examined on the part of the defendant, testified as follows:

Direct examination by Col. Thoroughman:

Q. I will get you to state your business, and what relation you hold to the Iron Mountain railroad?

A. I have assisted in organizing its express department, and have had full charge of it; that is one thing I have been doing.

Q. When was that?

A. About a year now.

Q. State if you knew anything about the Mississippi Valley Express Company, and the proposed organization of a company of that sort?

A. Yes, sir; there was such a company proposed, skeletoned and proposed to be organized, but it fell through, sort of abandoned, in fact it was abandoned.

Q. Was it not absolutely abandoned, and never put in operation?

A. Never was put in operation; never was an official step taken in the matter; never filed any articles of association. We apportioned out the interests of it, but never carried it into effect; but instead thereof, the then president of the Iron Mountain railroad decided to organize a railroad express department, of the railroad absolutely and bonafidely.

Q. And that was done?

A. Yes, sir.

Q. Where do the proceeds of the express department of the Iron Mountain railroad company go?

1234 A. They go into the treasury of the Iron Mountain railroad—the railroad treasury.

Q. What relation did you sustain to that department?

A. I have been manager of it.

Q. You are manager of the express department of the road?

A. Yes, sir.

Q. Do you know what its earnings have been to the railroad company, compared with the earnings that come to the railroad company under the contracts with the Southern Express Company before the inauguration of this litigation; how do they compare, are they smaller or larger?

A. Very much larger.

Q. So that the profits to the railroad company are much larger than they were when the company——

(Counsel for complainant objects to the question.)

WITNESS: Well, they are larger.

Q. They are larger in every respect?

(Objection renewed unless witness has the data.)

Q. They have been larger, if I understand you, since the organization of the department than before the organization, as derived from the Southern Express Company, under its contract with the road?

A. Yes, sir; the earnings have been increased to the road; that is understood all around, the statements show.

Q. State whether the public has been served for less money by the Iron Mountain express department than by the Southern Express Company?

A. They have been; the railroad's tariff is much lower than the express company have served the people along the line of the Iron Mountain railroad before. It has been reduced a great deal.

1235 Q. State what per cent.

A. Well, probably one third—fully one-third.

Q. The sum total to the public has been reduced, you think, one-third?

A. And in some things one-half, and still below that.

Q. Well, you of course helped make these tariffs for the road, I mean the tariffs that were charged to the public for the transportation of matter carried by the railroad company?

A. I didn't do the mechanical part of it; I suggested a reduction though, and consulted other gentlemen, and it was greatly brought about by the business community of Little Rock and other places;

A. I don't think it would make any difference.

Q. It might be better for the Pacific, mightn't it?

A. It would give us more business, perhaps.

Q. And might be better for the Iron Mountain Railroad Company; but as far as the Southern Express Company is concerned it would hardly be advantageous to it; and, if I understand, the general effect of the arrangement made between the Pacific and the Iron Mountain Railroad Company is to the exclusion, or the tendency of it is to the exclusion of the Southern Express Company from this Iron Mountain railroad route?

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A. I didn't do the mechanical part of it; I suggested a reduction though, and consulted other gentlemen, and it was greatly brought about by the business community of Little Rock and other places;

we tried to meet the views of the public the best that we could, and we reduced it.

Q. Now, I will get you to state whether the service to the public, so far as you know, has been as satisfactory and as efficient since the organization of the department called the express department of the Iron Mountain railroad, as it was before?

(Counsel for complainant objects to the question as leading.)

Q. How as the public been served with reference to the security—the expedition and safety—since the organization of this express department?

A. Well, I have never heard any complaint from any one, not a single complaint that I can remember of now. We have had a great many congratulations from the business public.

(Answer objected to by complainant's counsel, as incompetent and and irrelevant.

Witness (continuing): That we had done great service to the
business people, that the tariff was oppressive before, but now
1236 that it was reasonable, and people could afford to go into
the express office, and would not have to run away.

(Complainant's counsel renewed the objection to the answer, as incompetent.)

Q. Tell us what you know about that subject.

A. Well, the prices, the low prices; they talk about this; it is a matter of public notoriety and comment—the prices, you know—the relief afforded to the people by the organization of this railway express, in view of the Southern Express Company, the way they had been serving them. They claimed that the rates had been oppressive, and that we had reduced them, and there was general satisfaction expressed everywhere, as far as I know.

(Answer objected to, as incompetent and irrelevant.)

Q. State how it is in reference to the security to the public, whether the losses of property intrusted to your department have been small or large, or what they have been.

A. They haven't lost anything at all, hardly, and everybody feels secure, absolutely secure, that the railroad will pay if they lose, and they don't mean to lose.

(Counsel for complainant objects, as incompetent and irrelevant.)

Q. With reference to paying the losses, to what account is it charged up in the books of your department; suppose a loss occurs of $100.00, is it charged up to the expense account and carried right along?

A. No; loss and damage, as I understand it.

Q. And it is paid at once?

(Objected to.)

A. Oh, of course, everything is settled; I dont know of any existing claims.

(Counsel for complainant objected, as incompetent and irrelevant.)

1237 Q. Now, I will get you to state the character of the business that you have done in this department of your railroad—what it comprises.

A. Well, everything that is sent by express, or offered to be sent by express.

Q. Every conceivable thing?

A. Every conceivable thing; moneys, valuables, all kinds of securities, notes, bonds, deeds, silver, gold, treasure of all descriptions, merchandise, express merchandise of all descriptions—in fact, everything. We take from the other express companies; you know we carry everything they carry.

Q. You meet other express companies at both ends of your line, do you?

A. Yes, sir; we do now; always have, in fact.

Q. You exchange with them?

A. Oh, certainly.

Q. Now, suppose I send over your express department from St. Louis a package to go beyond Texarkana, of any given number of pounds, there is one rate on that, I understand—a fixed rate on it?

A. Yes, sir.

Q. Suppose I was to send that same package to Texarkana from St. Louis, there would be another rate, wouldn't there?

A. Yes, I believe there would.

Q. Now, I will get you to state if it is not, as far as you know, universally the case throughout the management of the express business of this country, where a package goes over simply the line of the person it is first intrusted to, that is one rate?

A. Yes, sir.

Q. And where it has to be carried by two others, a different rate?

A. Yes, a lower rate; that is the case.

Q. You say you have in the prosecution of this express business of your department handled all sorts of property entrusted usually to express companies?

1238 A. Yes, sir; everything; thoroughly able to take care of everything.

Q. And do it?

A. Yes, sir; find no difficulty in doing it.

Q. Right there I wish to ask you in reference to the subject of accessorial service, whether the Iron Mountain Railroad Company could not more conveniently transact all of the express business that is carried over the line of your road, if it was all brought to your office in the city of St. Louis and to your depot—I mean your warehouse at the Union Depot—in other words, whether you could not well afford, for the convenience and expedition of transacting the express business, to go out and gather it up and carry it to your depot better, than to have it brought to your office, and there encumbering your warehouse so as to compel you to assort it after you get it in there; whether you could not better afford to gather it up, than to have it brought to your room?

(Objected to, as leading and incompetent.)

A. I will answer that, that if the teams are fully organized and equipped to take these goods at any part of the town where we visit we had just as soon do it, and just as soon haul it, and just as soon call for it wherever it is, as to have it brought by other teams and dropped in on us; we don't take that into consideration at all, we had just as soon go after it, being organized, and all ready to do it as to have it brought to us, and we don't thank anybody for doing it. There is no rebate or anything else where they bring it to us at the depot or the office or anywhere else, and we would go after it just the same, and we make no difference; that is our rule, and, I believe, the rule of other express companies being fully organized to do the business.

Q. Being thus organized, what proportion of the entire charge against any piece of property would you allow for thus gathering it up, when you are doing it for your own convenience, as to the whole amount charged for the transportation? 1239

A. I wouldn't allow nothing; we would just as soon take it at the depot or wherever it is offered, being organized for that purpose.

Q. Suppose—to debate the question—as Judge Breckinridge did the other day——

(Counsel for complainant objects to the word "debate.")

Q. To illustrate, we will suppose that a package is to be carried from St. Louis to Texarkana, the charge on which is $1.00; now, that package is brought to you by the consignor to be carried, what proportion of that dollar do you allow to him for bringing it to your depot or to your office out of the $1.00 charged for the whole transportation?

(Objected to, as leading and argumentative.)

A. Wouldn't allow him a cent; charge him $1.00 just the same if he hands it to the express car or we go after it.

Q. If any allowance of a per cent. be made out of that $1.00 for the wagon that brought it to the place of starting, and to the man coming, the consignee at the place of destination and getting his own package—if any allowance can be made upon usage or custom, what per cent. of that $1.00 should be given to those two people, the one that brings it and the one that carries his package away?

A. There is no custom of that kind; I never heard of any, and we would not pay anything at all—no express company in the world would pay anything.

(Answer objected to as before.)

Q. Tell me this: What is the custom, if you can speak of it universally in this country, in reference to the performance of accessorial service, whether it is to be performed for nothing, and as a means of gathering up business, or whether it is to be charged for; whether in the entire history of this country it has been done for nothing? 1240

(Objected to, as leading, incompetent, irrelevant, and argumentative.)

A. Well, it seems to be a part of the express system of this country, this accessorial service, and when a man carries his package to the depot himself they laugh at him if he asks pay for it, and he never gets it; never heard of it. It was never contemplated, and there is not an express company in this country that would pay him anything, no matter how big his package or how many loads of thousands of tons, they wouldn't pay him a cent to bring it anywhere, but they will go after it for nothing; that is the universal custom, as I understand it, and I don't think there is an express man in this country that will dispute that.

Q. I will ask you to state if you know any reason why the Iron Mountain railroad express department cannot serve the public as well, as safely, and as expeditiously, and as conveniently, as any other organized express company in this country; do you know of any reason why they cannot?

A. I know of no reason; there is none.

Q. Now, I will get you to state if you know the Ohio & Mississippi Railroad Company—the road?

A. Yes, sir.

Q. Do you know whether it has in operation an express department?

A. Yes, sir; that is my understanding; in fact, I know it has.

Q. Do you know anything about the estimate in which the public hold that department of the Ohio & Mississippi Railroad Company?

(Objected to, as irrelevant and incompetent.)

A. As far as I know, they hold it with great respect.

1241 Q. It receives public patronage, does it not?

(Objected to, as leading.)

A. Oh, yes; my understanding is its earnings have largely increased, and there is a better feeling throughout; the people think they are served——

(Complainant's counsel objects to the answer.)

Q. State if the public is not served by the Ohio & Mississippi Railroad Company, as far as your information goes, for less money—as far as you know?

A. I don't know anything about their tariffs, but I know it is all satisfactory; I have never heard any complaint.

Q. You have been, of course, conversant with the manner in which the Iron Mountain company has treated the Southern Express Company since the beginning of this law suit, have you not?

A. Yes, sir; I have been gone a good deal, but——

Q. You have kept yourself advised well enough to speak of the subject, as to whether there has been any discrimination, or how they have been treated in reference to the rest of the public?

A. They have been treated just as any other shipper has been treated, and treated as a shipper.

Q. Treated in the same manner as any other shipper?

A. Any other shipper, and as a shipper.

Q. I will ask you to state if you know the main provisions of the contract that heretofore subsisted between the Southern Express Company and this railroad company; that is to say, do you know the amount of money that the Iron Mountain Railroad Company was receiving for the express service it extended to the Southern Express Company?

A. I believe I do; I did know, I think; I would have to turn to the book to see. It was on a six thousand basis, I believe, $195.00 a day.

1242 Q. Now, state whether in your opinion that was a fair and adequate compensation to the railroad company for the service that it extended the Southern Express Company, in your opinion?

(Objected to, as he has not yet stated what the service was.)

A. I don't think that was enough to pay the railroad; I don't think the railroad was receiving revenue enough for their express facilities.

Q. Under the management of the express business on the railroad, while operated by the Southern Express Company, they gave through bills of lading, did they not, or do you know about that?

A. I don't know much about their tariffs, etc.

Q. Tell us how it is with your own department; suppose I am in Texarkana, and want to send a package to New York city?

A. We send it for you right square through to New York city and deliver it, and everything as well as any other express company in this or any other country, or anybody can do it.

Q. What business were you in prior to coming in connection with the Iron Mountain railroad?

A. I have been in the transportation business, running stages, on stage lines, and upon which we done an express business.

Q. On this line you did an express business?

A. Yes, sir.

Q. How long have you been familiar with this express business?

A. I have been familiar with it in that way for several years; while connected with Wells, Fargo; carried their express business from the end of the Southern Pacific railroad of California on through Arizona on our stage lines, and I had a good insight in the business.

Q. You understand the express business, do you?

A. Yes; I think I do; I could get along, I think, with it—make out to.

1243 Q. In speaking of allowing persons for bringing to your office or railroad packages and taking away packages you say there is no change in the history of the express business in regard to that, and that no such charge was ever thought of?

A. No; nobody ever got anything for bringing any bundles or packages to the depot or anywhere else.

Q. In reference to carrying packages, do you do such a thing as carry C. O. D. packages, collect for them, and remit the money?

A. Yes, sir.

Q. Do the same on the collection of bills and notes?

A. Yes, sir; everything.

Cross-examination by Mr. WHITFIELD:

Q. I understand you to say that you were familiar with the organization, as far as it progressed, of the Mississippi Valley Express Company?

A. Yes, sir.

Q. And that that company never took any official step?

A. No, sir.

Q. Did it not go to the extent of making and signing a contract with the Iron Mountain railroad?

A. Yes, sir; a proposed contract, but it never organized; that is what I mean to say by official step; it never did lift a foot; it organized afterwards, of course.

Q. But it made a contract?

A. It made a contract with the Iron Mountain railroad; yes; in the light of an official step, if you consider that an official step, why of course it was; but what I meant was, we did not go on the records anywhere in organizing; we were to organize under the laws of Arkansas, and we never went into the secretary of State's office at all.

1244 Q. Was not that contract abandoned because of a judicial decision to the effect that a railroad company could not make an exclusive contract with an express company?

A. No, sir; I don't think it was; it was considered the policy of the railroad company that it should organize its own express, and we sent to Louisville and had a consultation there with lawyers, and it was considered best to organize their own express department, and Mr. Allen decided so himself, and done so.

Q. About the time that you abandoned the Mississippi Valley Express Company had you not been advised that the Southern Express Company would not yield to your right to make an exclusive contract without a resort to the courts?

A. Well, they came to see me themselves; the express company told me they were going to fight unless they could get an interest in the contract, and they wanted to know who had authority to speak for it, and said if they could get an interest they wouldn't fight, but if they could not get any interest, why, they would, and they would not relinquish their right, and so on; Mr. Fisher came to me and made such talk.

Q. Unless they could get an interest?

A. In this new organization.

Q. Mr. Fisher told you that?

A. He came and gave that sort of warning, that they would fight unless they could have a part.

Q. Came and demanded an interest in the new Mississippi Valley Express Company?

A. I cannot say that.

Q. He threatened if you did not give it to him he would make war in the courts?

A. I can't say that he put it in the shape of a demand, but he said they would like to take an interest, not to have any fuss; that is about the substance of what he said.

1245 Q. That was a conversation you had with Mr. Fisher?

A. Yes; or rather he did with me; he came to my office to ask me about it and talk about it; that is about the substance of what he wanted; that he was sorry to see the fight go on, and so on.

Q. Was there any person else present at that interview?

A. Mr. Agee was, I think, present.

Q. So the Mississippi Valley Express Company was abandoned out of a conscientious regard for the best interests of the railroad company and its stockholders, was it?

A. Well, Mr. Allen decided the thing himself, sort of, and he was president of the road.

Q. I am asking you if I put the proper construction on what you have just said?

A. Well, I don't know that the matter of conscience was talked at all in the abandonment of it; it was just abandoned because Mr. Allen had taken this step; you know, and I think everybody concurred with him, that it was the proper thing to do; I suppose he tried to protect the railroad, and thought it would be a wise thing—what he was doing.

Q. It was organized in point of time as—or attempted to be organized—a union express company or Mississippi Valley Express Company?

A. What do you mean by union express company; I don't understand your question quite?

Q. That was a company there in Kentucky for a while.

A. My understanding was, that had been running about a year or so, or several months before this was talked of at all.

(Counsel for defendant objected to everything about a union express company, as we never heard of that before.)

Q. You said awhile ago that the parties or individuals 1246 composing the Mississippi Valley Express Company were determined upon and their respective interests in it allotted; who were those parties, and what were their respective interests?

(Objected to, on the ground that it is totally immaterial and irrelevant, the bill itself alleging that the proposed organization of the Mississippi Valley Express Company had been abandoned, and was abandoned at the time the bill was filed, so that it is unnecessary to inquire into it.)

A. There were a dozen or more. I don't remember how it was parcelled out. I had probably as much of it as anybody else myself. It was apportioned out between Mr. Marquand's sons and Mr. Allen's sons, and Mr. Paramore, I believe, was interested in it, and there was a lot of people in New York——

Q. Give their names?

A. I can't think of their names now—probably twenty in all—and they were Missouri railroad people.

Q. What was the amount of stock agreed to be distributed?

(Objected to, as immaterial, irrelevant, and incompetent.)

A. The subject was talked about in a moneyed way, more especially, I think; the proposition was that it would need about $50,000 or $60,000; that was to be the amount of the distribution.

Q. What interest were you to have?

A. I was to have $5,000.

Q. That was about one-tenth?

A. Yes, sir.

Q. What interest were Mr. Allen's sons to have, each of them, and how many of them were there?

A. There were two or three of them; $2,000 or $3,000 apiece; somewhere along there.

Q. Three sons, $2,000 or $3,000 apiece?

A. I think about three sons.

1247 Q. How many sons had Mr. Marquand, and how much interest was each of them to have?

A. There are two of them, I believe—two of his sons—and the same interest, or probably a little more.

Q. Can you name others of the persons that were to be interested in the scheme?

A. Well, yes; there were several others, distributed around in small lots—New York friends of Marquand—several friends of Marquand that had $500, $1,500, and $1,000, etc.

Q. What connection, if any, with this railroad had this Mr. Allen, of whose sons you speak as stockholders?

A. Mr. Thomas Allen, president of the railroad.

Q. What connection, if any, had Mr. Marquand?

A. He was vice-president of the road.

Q. What connection, if any, had you at that time?

A. None; no official connection.

Q. Did you have any connection at all?

A. Well, I am a holder of its securities, and interested in its success.

Mr. THOROUGHMAN: But you held no official relations?

A. No, no; I was an outsider.

Mr. WHITFIELD: Did any of these three sons of Mr. Allen have any connection with the railroad?

(Objected, to, as incompetent.)

A. I don't know; I believe some of them.

Q. Was not one of them vice-president?

A. I believe he was—Mr. Russell Allen, I don't believe the other two had any relation to it.

Q. Do you remember the terms of that contract?

A. Yes; to a certain extent I do; you have a copy of it, I think.

1248 Q. What is your recollection about the compensation for the service to be provided under that contract, and the compensation to be paid therefor?

(Objected to, as immaterial and incompetent.)

A. I cannot remember. I think it was half that we were to give the railroad company—half of the gross earnings.

Q. How came you to agree to that basis; did you think that was a proper thing and the right thing?

A. Yes; that it was the proper thing; and I believe the contract in any event guaranteed the railroad company a greater compensation——

Q. I don't care about the terms of the contract, the details of it, unless you state it all.

A. Well, that is the main point. I remember distinctly that there was a paragraph in the contract, in any event we were to guarantee the railroad company a sum greater than they had ever received from the Southern Express Company, and named the amount—I believe five per cent.

Q. Who were the persons who made that contract?

A. I had a good deal to do with it myself; I was looking after it.

Q. Who were you representing?

A. Well, I was representing myself; I was taking an interest in it.

Q. Who did you conduct that with; who was representing the railroad?

(All the foregoing is objected to by defendant's counsel.)

A. Mr. Thomas Allen, and talked it over with W. R. Allen a great deal.

Q. Mr. Thomas Allen and Mr. Russell Allen on the part of the railroad?

A. Yes, sir; preliminary talks were all with Mr. Thomas Allen.

Q. And you agreed with the railroad that about one-half was a fair compensation for the railroad?

1249 A. Yes, sir; half the gross earnings on everything, except valuable packages or something of the kind.

Q. And how much on the valuable packages?

A. The railroad company didn't get any of that.

Q. Didn't get any of that at all?

A. No, sir.

Q. You thought that was a fair thing at the time, did you?

A. Yes, sir; we thought that was a fair contract.

Q. Well, why didn't you give the railroad company all the gross earnings, as you say it was not reasonable for the railroad company to haul for any less, by reason of your performing the accessorial service?

A. Because we paid the employés ourselves—messengers, and all that sort of thing.

Q. Hired the officers, did you?

A. Yes; hired the officers.

Q. And did all the hauling about the streets?

A. We done everything; took charge of it.

Mr. THOROUGHMAN: It was to be a totally different organization?

A. Yes, sir.

Mr. **Whitfield**: You were to perform the hauling about the streets, were you?

A. We were to do the express business, whatever constitutes that.

Q. You stated a while ago you knew what the express business was?

A. I think I do, a little. I don't profess to be any adept, or expert, or artist, but I think I could get along.

Q. Then the express company was to do the hauling about the streets, the collecting, and the distribution about the streets?

A. Oh, certainly; we contemplated a full outfit to do the express business, if we ever organized.

Q. Having your own employés—messengers, agents, and superintendents?

A. Certainly; everything.

1250 Q. And employing generally all the equipments with which the express companies are ordinarily provided?

A. Yes, sir.

Q. When you were making that contract were you satisfied that you could make less rates to the public than had been charged before?

(Objected to, by defendant's counsel.)

A. Well, I can't tell what we would have done if that thing had not died; but it is dead and gone, and never was anything of it, and I can't tell what we would have done. We would have done what would have been the best policy for all concerned; there is no doubt about that. I think we would have reduced the tariff, because we always thought it was too high. The people of Little Rock complained about it, and I have a great deal of business relations down there, and all that sort of thing; but I don't know what we would have done, you know—can't tell. It is just simply extinct; never was anything of it, and quit thinking about it; but we should have done just as any other corporation would have done, you know, for its success, if it had ever opened up; but it was abandoned, and we quit thinking about it; probably wouldn't have done any better than the Southern Express Company.

Q. Are the rates now charged for express matter by the Iron Mountain Railroad Company in excess of the rates that you would have paid the Iron Mountain railroad under that Mississippi Valley contract?

A. You mean are the rates——

Q. That is, is the railroad company carrying for the public as cheaply as it would have carried for you under that contract?

A. Well, I suppose it is; I can't tell exactly; you see ours was a contract on whatever business might be done, and whatever the railroad got would be dependent on what we carried.

1251 Q. I will put the question in another way: Would the railroad company have received, under the contract with the Mississippi Valley Express Company, for the volume of express freight now actually carried, as much as it is receiving now, in the way of business as done now?

A. I think it would, if we didn't have any contest on hand; I think it would.

Q. Then you think the Mississippi Valley contract was a fair one?

A. Indeed I do.

Q. And would have paid the railroad as much as the railroad is now receiving for the express business in the way it is now conducted?

A. Why, I certainly think that contract was a fair one to the railroad, and I think we would have, with no contest on hand—we would have worked up an immense express business, and the success of the Mississippi Valley would have been the success of the railroad. I think their earnings would have increased largely.

Q. What do you mean by contest on hand?

A. I mean if there was no cut rates, and we didn't have to carry for nothing, and no diversion of business, and we would have had the road to itself, and nobody working against it, and the natural channel to Texas; that is all.

(At this point, by consent, the examination of this witness was adjourned until to-morrow, April 22d.)

1252 APRIL 22, 1881.

Parties met pursuant to adjournment, and the further cross-examination of Mr. KERENS was resumed as follows:

Q. What is your official connection, if any, with the Iron Mountain railroad at this time?

A. At present, I am a director in the road.

Q. I believe you stated that you are still manager of the express department?

A. Yes, sir.

Q. I believe I understood you to say yesterday that the earnings of the road were much larger in the express service under the present arrangement than they were under the arrangement of the Southern Express Company?

A. Well, they are some larger; that is my understanding; I don't know exactly how much, but they are larger.

Q. There was a comparative increase of transportation generally over your line?

A. Yes, sir; I believe everything is increased.

Q. I understood you to say at the time the Mississippi Valley Express Company was contemplated there was a good deal of complaint about the charges for the express service as conducted by the Southern Express Company, and that was one of the causes that led to the contemplated organization of the Mississippi Valley Company?

A. No; I did not assert that was one of the causes; I said that was the fact; the principal cause was by Mr. Allen declaring that he thought he had not been treated fairly by the Southern Express Company, and therefore he wanted to do better for the railroad; that is what caused it really.

Q. Was it, among other things, contemplated to meet this complaint of high charges?

A. No; I think the object of the railroad was, they felt
1253 they were not getting enough revenue out of the express
business, and in seeking to get more another way only to organize a new institution; that the express companies had all combined together, and one wouldn't interfere with the other, and, as I understood Mr. Allen——

Q. Then it was not for the purpose of reducing rates to the public?

A. Oh, they saw they could do that, too, you know. The tariff maintained by the Southern Express Company up to the time this new concern was proposed to be organized was a war tariff, and it was understood by everybody that it was a war tariff.

Q. Do you know what that tariff was?

A. I know it was outrageously high on money, because I was directly interested in that respect; I am interested in the National Merchants' Bank at Little Rock, and I couldn't stand the charges.

Q. You stated yesterday that the tariff of charges made by the express department of the defendant railroad was much less than the charges made by the Southern Express Company for similar services?

A. Yes, of course.

Q. Why of course?

A. Because we made it less.

Q. Haven't you made the tariff much higher in some instances?

A. No, sir; I don't know of a single instance.

Q. Do you know the present tariff of your railroad for express services?

A. I haven't examined it recently very minutely; my understanding was that it was below this; I don't know of any recent change, although I don't watch it every day; I haven't looked at it for a good while; it is a matter of detail that I don't know anything of.

Q. I have had prepared a little statement there, and I wish you to look at it to see whether those charges for the railroad express are correct.

1254 Witness (reading): "Ironton, Missouri, from St. Louis, 10
pounds, etc." Well, what do you want me to do with it?

Q. I wish to know if those charges as set out there are the charges according to the tariff of the Iron Mountain express department.

A. I can't tell you whether they are or not. This seems to be drawn by yourself; I don't know anything about it; if this is made by our office, why I will believe in it; but I don't know anything about this list of figures you show me.

Q. You don't know anything about your tariff, then?

A. I don't know anything about this piece of paper that you hand me—a lot of figures on a sheet of Southern Express Company's paper; I don't know what this is; if I wanted to tell you anything about the tariff, I would have to go and consult the directors.

Q. Well, that is what I am trying to find out.

A. I know in a general way we reduced it below the Southern

Express Company's tariff; greater in some items, more than half, which give great relief to the people in that respect.

Q. Give me some instance in which you have reduced it more than half.

A. On money; more than half on money.

Q. Between what points?

A. All points on the road below there; we have to pay the local tariff of the Southern Express Company, and whatever we send down there, you know, they charge us their local tariff, and will not prorate with us, in other words.

Q. How do you know the public has been better served?

A. Well, I have been informed so by our agents at Little Rock, and I see the tone of the press on that subject, which I think to be true; a great many people have told me themselves that they felt a great relief.

Q. What do you mean by the tone of the press; what newspapers?

1255 A. Newspapers along the line of the Iron Mountain railroad; and people have told me themselves that they looked upon it as a great benefit to the patrons of the Iron Mountain railroad that we had organized an express, and that the facilities were more reasonable, and so on; I don't think there is any dispute about it; you can get plenty to prove all that, if you want it.

Q. Did I understand you to say this, that you made a less charge on the Iron Mountain railroad on a piece of freight going by express under a through bill of lading from St. Louis to Houston, than you would make for a piece of freight going from here to Texarkana?

A. Yes, sir; that is the rule; I said that was the rule, and I believe that we do, although we have to pay the Southern Express Company their local charges, or the Texas Express, which is the same thing.

Q. But I am asking now about now.

WITNESS: Now? Yes, sir; I think we compete with them in that respect, no matter what the outcome was; had to do it in the nature of things.

Q. What is the rate on a hundred pounds from here to Texarkana by the Iron Mountain Express?

A. I don't know without looking at the tariff per hundred pounds; you can ascertain that very easily by getting the tariff.

Q. Do you know what the rate is from here to Houston by the Iron Mountain Express?

A. I do not; I would have to consult the tariff sheets and the men who have charge of that business to give you any data about what it would cost to send it; I am not conversant with that part of it; I don't look after the details or tie myself down to them.

Q. Well, upon two packages shipped by the Iron Mountain express department from St. Louis each way, one hundred pounds of a similar character, one destined to Texarkana and the other 1256 one destined to Houston, will the Iron Mountain railroad receive precisely the same compensation for each package?

A. Well, I don't know about that; we have to conform, you know, to the general rules of tariff; where it interchanges with lines we pro-rate; it is not so much, I suppose, as it would be just destined from and to a point on our own line.

Q. You would make a reduced rate, would you?

A. Well, I don't know about that; that seems to *to* be the general usage, as I stated yesterday, and that is all I do; so you can't put up a hypothetical case without I would go and get the tariff.

Q. Didn't I understand you yesterday to say that you were general manager of the road, and superintendent in the making of tariffs?

A. No, sir; you did not.

Q. Do you have anything at all to do with the making of tariffs?

A. No, sir; only the ground work of the whole thing, in which it was understood that we reduced the tariff.

Q. Then you mean to say you don't know in point of fact whether any abatement is made on the Iron Mountain railroad for through freights from the prices of local freights?

A. Not of my own positive knowledge, this minute, I do not; I would have to consult the tariff and the clerks that have charge of that, and ask them "What is it about this and that?" before I could give you an answer; of course I know the general outline of the business.

Q. Isn't the general outline of the business such that under it a deduction or reduced price is made for through freights as compared with the local freights?

A. I think it is; that is my impression; that would seem fair, and I believe it is the custom; of course a package from New York
to Houston is cheaper for the whole distance than the same
1257 package would be for any portion of that distance per mile;
that is always the case.

By Col. BROADHEAD: You mean proportionate?

A. Proportionately, of course.

By Mr. WHITFIELD: Have you an arrangement with the Pacific Express Company, or any other express company, by which you make shipments by express from St. Louis to points in Texas?

A. Yes, sir; I think we have such an arrangement; I can't tell you just what it is though. That is just being organized, without being fixed up.

Q. Under that arrangement, do you not carry express matter over the length of the Iron Mountain railroad, destined to points in Texas, for less compensation to the Iron Mountain railroad, than you carry similar freight shipped by the Southern Express Company to the same points?

A. I can't tell you that; I am not personally knowing to that yet; I don't know about it.

Q. Did I correctly understand you to say that, as a matter of convenience, you would rather go out on the streets and collect up express matter and haul it to your depot, and at destination to take it on your wagons and distribute it, in preference to having the owners of it haul it to your depot and take it away?

A. We would just as soon do it, having prepared for that thing, and it being an advertisement and being customary, we would just as soon do it—on the same principle that you would go to Barr's and buy a lot of goods, and they will send them home for you, or you can take them home in your own wagon. If a fellow brings his stuff to us we will take it, and we will go after it, too, and it wouldn't make any difference.

Q. You use wagons and drivers to accomplish that, don't you?

A. Yes, sir; belonging to the business.

Q. You have to pay for the wagons and drivers?

A. Yes, sir.

1258 Q. So it is some expense, is it not?

A. Yes, sir.

Q. But still is a matter of convenience?

A. Just as soon—having prepared to do this business, we would just as soon do it. Would not allow any shipper any consideration for doing that. We would just as soon do it ourselves, we say so, and we will do it, and we will go and get these goods. We are not going to allow a fellow to take care of us and beat us into doing what we don't want to do.

Q. Why don't you do the same for the cotton, and the coal, and the iron ore, and other things shipped over your road—lead, timber, and cattle?

A. Well, I can't tell you why, but if it was in the rules and accustomed to do it I suppose it would be done.

Q. It would certainly be a great convenience to the public, wouldn't it?

A. Well, I don't know whether the public would pay for it or not.

Q. Don't you know, Mr. Kerens, as a matter of fact, that it costs the public something to get their coal and cattle and other things from the depot to their places of destination?

A. Well, I don't know; I can't tell; I suppose if some good fellow would go and load up a load of cattle for me, if they were my cattle, I would be obliged to him, of course—it would be a help to me.

Q. Do you ever go about your depot?

A. Occasionally.

Q. Do you see any drays there hauling freight from the depot?

A. Of course.

Q. Public drays—compensated by the owners of freight, are they not?

A. I suppose they are. They are paid somehow.

Q. By the owners of the freight?

A. I don't know who pays them.

1259 Q. Don't you know, as a matter of fact, it would be a convenience to the shippers on railroads to have their freights delivered to their houses?

A. I should think it would; that is a plain proposition.

Q. But you said a while ago you didn't know.

A. Well, I don't know; you put these questions to me and want me to decide, you know. I can't tell whether people would be thankful for it or not. I would, if I had a lot of furniture to haul to the depot, and some fellow should haul it for me to the railroad, of course I would think it all right, and a convenience to me.

Q. Would the railroad just as soon deliver this ordinary freight to the warehouses and the owners as not?

A. Well, I don't suppose they would; I don't think they would.

Q. Because it would incur additional cost, wouldn't it?

A. I should say it would. It would be my version of it.

Q. How long has the Iron Mountain railroad been doing an express business?

A. I think since last June.

Mr. Thoroughman: Explain what you mean by that question; you mean on this occasion?

Mr. Whitfield: By an express department.

Witness: It has been doing that for ten years; before the Southern Express Company.

Mr. Whitfield: I mean by its last express.

Witness: Well, about one year.

Q. You have made up a statement for the nine months following the first of June that they have been doing the business?

A. No, sir; I have not.

Q. Has such a statement been made in your office?

A. I have not seen it. Mr. Clark may have made one, and I presume he has, but I don't know whether he has or not; I have not seen it.

1260 Q. The statement made in the last annual report of the Iron Mountain railroad is authentic, is it not?

A. I should think it was.

Q. It is official, is it not?

A. Yes, sir; I suppose it is; I haven't studied that.

Q. The expenses embraced in that report, or embraced in any statement made up in your office for conducting express business, is made to conclude only the period of time after the first of June last, is it not?

A. Whatever the statement purports—whatever it is, why that is what it is—what it purports to be; and issued by the office—why that is authentic; whatever it is, it is.

Q. It might be something that it don't purport on its face to be. For instance, they give there the expense of conducting the express business, and I wish to know if that was for nine months, or whether it was for twelve months.

A. I is, I think, whatever time it says it is.

Q. Suppose it don't say anything about it.

A. Well, then it is not a statement.

Q. It is put down expenses for express department, 1880, page 34.

A. You will have to get Mr. Wallace to explain this; I cannot.

Q. Don't you know as a fact that the expense of operating the express department is confined to the period of time subsequent to the first of June last; don't you see it has nothing for 1879, and that the increase is precisely the same, which shows it was nothing previous to that time?

A. Mr. Wallace will explain all that; he made it up, and he will tell you how he made it up, and all about it. He is the auditor, and that is his report; we turned the money in there, and that is all we done; I don't know what he does with it.

1261 Q. I didn't ask you that question, Mr. Kerens; you have testified that you are connected with this railroad, and that you are the general manager of the express department, and that you are familiar with the express business as conducted over this railroad and elsewhere?

A. Somewhat; I don't profess to be an artist.

Q. By your position, you are held out as a person having some familiarity with that you have testified to?

A. When I give close attention; I generally look at it somewhat, but I haven't given it very close attention; I have been gone a great deal.

Q. I will ask you as an expert, and as an officer of the railroad, and having general charge of the express department, whether that expense for the operating of the express department of the Iron Mountain railroad is extended to cover, or purports to cover, the period of time commencing on the first of last June, or whether it embraces the entire fiscal year?

A. I can't tell you; there is $46,747.71 in the year 1880. Now, under the year 1879 there is nothing; now, I can't tell.

Q. Look a little further.

A. Then an increase, $46,000.00; under the head of "increase"—$46,747.71.

Q. That shows it was nothing the year before, don't it?

A. Well, not necessarily.

Q. How could it be an increase of precisely the same amount if it was anything the year before?

(Objected to, on the ground that the question is purely argumentative, and does not tend to elicit any fact in the knowledge of the witness.)

A. You will have to ask the auditor.

Q. I am asking you to explain how it could be an increase?

Mr. Broadhead: I object, because it don't appear the witness had anything to do with making up this report, or that he, by 1262 his duties, is required to be familiar with what it contains, and he didn't make this report.

Witness: No; I never examine this; whoever made this report would enlighten you on the subject of what it means and embraces; I don't know anything about it; I heard the president's report and Mr. Marquand's report read at the annual meeting.

Q. Was it adopted?

A. It was received, and ordered printed.

Q. You are a salaried officer of the express department?

A. Well, I suppose so.

Q. You say you treat the Southern Express Company exactly as any other shipper?

A. That has been my instructions over and over again, and it is the intention, and it has been done, I believe.

Q. Your instructions are to treat it as a shipper?

A. Of course.

Q. And not as an express company doing business as your own express department does over your railroad?

A. No, sir; just as a shipper; as one of the public.

Q. Do you recognize it as engaged in the express business, just as the Iron Mountain Railroad company is engaged in the express business over the Iron Mountain railroad?

A. We recognize it as a shipper when they present their goods to be shipped.

Q. You stated yesterday that you would send a package through to New York just as any other express company, did you?

A. Yes, sir; I suppose we do

Mr. **Broadhead**: From Texarkana to New York?

A. Texarkana to New York; the party taking the express package through from Texarkana to New York; we do.

1263 Mr. **Whitfield**: You mean you give through bills of lading for it?

A. Yes, sir.

Q. What official relation does Mr. Aikin bear to this defendant's express department?

A. He is the superintendent.

Q. Is he subordinate to you?

A. Well, I presume he is; I don't give much time or attention to this express business now, leaving it to Mr. Aikin; I don't intend to; I say I don't mean to; I have too many other interests; I don't suppose I will bother with it, and Mr. Aikin has direct charge of it, and is more familiar than I am with every detail and the things connected with it.

Q. Mr. Aikin has authority?

A. Full authority in every respect connected with the Iron Mountain Express.

Q. To make arrangements and agreements about the transportation of frieght?

A. Yes, sir; to make tariffs, etc., and to take care of everything.

Q. Read that letter, will you?

(Paper shown to witness.)

Witness (after reading): I think there should be one more condition embodied in that letter.

Q. Are all official acts and agreements made about express transportation of and by James Aikin, general superintendent of the Iron Mountain express department, binding and ratified and authorized by the defendant railroad company?

A. Well, we would live up to them, unless he would make some outrageous contract that we would not approve; we don't give up the road; we reserve the right to not agree to what would be a great detriment to this property of this railroad company; but, ordinarily speaking, why, of course, whatever he does he has authority to do.

1264 Mr. **Thoroughman**: You mean stronger than that; if he made that agreement, that he had a right to do it?

Witness: Oh, certainly.

Mr. **Whitfield**: If he made an agreement on March 3, 1881, in reference to the transportation of pack parcels and safes on the Iron Mountain railroad, he had authority to do so?

A. Yes, sir.

By Mr. **Shepley**: You have stated that the agreement between the Mississippi Valley Express Company and the St. Louis, Iron Mountain & Southern Railway Company was made because the authority of the Iron Mountain Railway Company did not think the Southern Express Company were treating them right in regard to the amount of compensation given them?

A. That gave rise to it on the part of the railroad; I heard such talk as that.

Q. Who made up the agreement; who were the parties who made up the agreement between the St. Louis, Iron Mountain & Southern Railway Company and the Mississippi Valley Express Company?

A. Well, myself and Mr. Thomas Allen and W. R. Allen; Mr. Aikin was here.

Q. Haven't all the parties who were interested in getting up that arrangement had the desire to make an agreement which should be just and right as well on the part of the railroad company as on the part of the express company?

A. Mr. Allen, I think, stated that he wouldn't make any arrangement that did not guarantee him more revenue.

Q. But in arranging the details and amount of compensation, it was the anxious desire of all parties engaged in the making of that agreement to make a contract which would be just both to the railroad and express companies?

A. Oh, yes, sir; everybody wanted to be fair; I made as
1265 good a contract as I could on the part of the express company; I was looking out for that, you know.

Q. And Mr. Allen had his attention directed to the fact, as he said, that the other contract with the Southern Express Company had not been fair to the railroad, so that he was looking out and solicitous to make a contract which should be just to the railroad company; wasn't he?

A. He wanted to make better terms for the railroad company.

Q. Better terms, and that the contract should be just to the railroad, so that they should have their fair share of compensation?

A. Of course, and he wanted to begin on some arrangement that would give him more revenue for the express business.

Q. Did you mean to make a fair contract or not, as between the express company and the railroad company?

A. We made a contract, in the first place——

Q. No; I wish to know what you went there for, in the first place.

(Objected to.)

A. We guaranteed the railroad more money to begin on; then, of course, it was made fair to all parties, as between man and man.

Q. That was the desire and intention?

A. Of course, openly and above board; discussed *pro* and *con*, and all the features of it. It had to start, and it started with a guarantee that it would pay more money to this railroad than was ever received from the Southern Express Company. Mr. Allen, I do not think, would move a peg until he could see that first.

Q. Considering that the railroad company was then increasing its business in a very large proportion, it was not a very risky guarantee, was it, on the part of the express company, to make
1266 such a contract, as far as to guarantee that the railroad company should have more money than it had from the Southern Express Company?

A. I think the express company felt perfectly safe in making that guaranty. I will be frank with you—I say it felt perfectly safe in making the guaranty.

Q. Did the St. Louis, Iron Mountain & Southern Railway Company have any stock in or interest in the Mississippi Valley Express Company?

A. Not as a railroad; I don't think they had, sir.

Q. Had the officers of the St. Louis, Iron Mountain & Southern Railway Company an interest in that company?

A. Well, all I can say is to name the parties.

Q. Very well, name them.

(Objected to.)

A. I named them yesterday. The parties I named yesterday.

Q. Were there any others, connected as officers or as directors of the St. Louis, Iron Mountain & Southern railway, that had any interest in or owned any stock in the Mississippi Valley Express Company except those that you severally named yesterday?

A. I named yesterday—there were a lot of Mr. Marquand's friends in New York.

Q. When you say there were a lot of Mr. Marquand's friends in New York, what do you mean? I asked you distinctly whether any of the officers and directors of the St. Louis, Iron Mountain & Southern Railway Company owned any stock in the property or interest.

A. I think there was some of the clerks in the New York offices, individually, had some little interest; probably some of the New York directors.

Q. Do you know what New York directors?

A. Mr. Marquand's friends. A whole lot of his friends there that are interested—directors and so on. I think they were all to have a little of this.

1267 Q. I am asking you now, and you have experience enough to know what the meaning of "directors" is, and what the meaning of "officers" is—they are not clerks. I ask, did any of the officers or the directors of the St. Louis, Iron Mountain & Southern Railway Company, did they own any stock in or any interest in the Mississippi Valley Express Company?

A. I will answer in this way: I think they have. Mr. Marquand was to give his friends there in New York, this one and that one, and I think they number three or four directors, a little of the stock. They were to have a little interest in it. For instance, Mr. Shethar, and Henry Walling, and L. W. McWilliams.

Q. Did Mr. Paramore have any connection?

A. He was to have a little.

Q. Did he have some connection with the road at that time?

A. No, sir; never has.

Q. Are the gross receipts of the railroad paid by the Southern Express Company included in this statement as receipts of the express department?

A. I think they are; yes, sir.

Q. Do you know whether the fares paid the railroad by the Southern Express messengers are included in these receipts or not?

A. I think they are, but the auditor will tell you absolutely.

Q. Does the railroad charge its express department with the transportation of its messengers?

A. I think not; no, sir.

Q. Who first approached you on the subject of the organization of this Mississippi Valley Express Company?

(Counsel for defendant objects to any further investigation of the Mississippi Valley Express.)

A. Well, I think I was one of the fellows myself that started it.

1268 Q. Was Mr. Soper another?

A. Yes, sir.

Q. What was Mr. Soper's relation to the railroad at that time?

A. He was general superintendent of the railroad.

Re-examination by Mr. THOROUGHMAN:

Q. When did you become a director of the Iron Mountain railroad?

A. March 7th, 1881.

Q. Before that you had no official relation with the road except as connected with the express department?

A. Yes, sir.

Q. I will get you to state now in the conduct of the express business whether there has been extended or not the same advantages and facilities to the Southern Express Company that have been extended to any other shipper in like condition with the Southern Express Company?

A. There has; oh, yes.

Q. Whether there has or not been extended to them the same conveniences for transacting their business that the Iron Mountain express department has taken to itself?

A. In the cars, yes, sir.

Q. And in every other respect?

A. Yes, sir; I suppose that is so.

Q. Whether or not there has been any distinction, as far as you know, made between the conduct of your own business and that of the Southern Express Company under the order of the court?

A. No, sir.

Q. Now, protesting that I should not be driven to asking any questions about the Mississippi Valley Express Company, I will ask you if it was ever organized or anything concerning it ever done in putting it upon its feet other than what you stated on yesterday?

1269 A. No, sir; it was abandoned, and the contract abrogated.

Q. I understand you to state that the information you got from Mr. Allen was that he wanted that department to earn more money for the stockholders, and therefore they set about some means to bring that result about?

A. Yes, sir.

Q. You say before anything would be done or consented to by Mr. Allen there had first to be a guaranty that the company was going to receive more money than it ever had received from the express company?

(Objected to, as leading.)

A. Yes, sir; that was the first requirement.

Q. You stated a little while ago, I understand, that it was then an experiment, and you didn't know exactly what could be done at the time you made the contract with Mr. Allen?

(Objected to, as leading.)

A. I don't believe that question was brought up.

Q. You said, in the first place, Mr. Allen required you to guaranty more money?

A. Oh, certainly; he wanted before he would talk about a contract some guaranty that they would get more revenue out of the company.

Q. He claimed what?

A. He claimed that the road was not getting enough revenue out of the express business, and that they should guaranty they must have more, and then thinking, of course, it would go beyond this guaranty.

Q. State whether or not it was one of the provisions of the contract that there was to be further conferences between the contracting parties, so that the railroad might still get more revenue?

(Objected to, as the contract should be produced.)

1270 A. I don't remember what the contract states in regard to that, as to provision—only I do remember that it contained a guaranty.

Q. General Whitfield asked you in regard to gathering up express matter, and then he asked you if you would gather up cotton, iron, lead, and cattle, etc., etc. Is or is not such articles as I have last named express matter at all, or so regarded by the commercial world?

A. They are not express packages.

Q. Well, it is not matter that is usually understood by express matter; is it?

A. It don't go on passenger trains.

Q. What you mean, if I understand, is where you were called on to carry express matter that goes on passenger trains, that you would as soon go out and gather it up for transportation as to have it brought to you?

A. Yes, sir; we make no difference.

Q. You, of course, can make no calculation as to the heavy articles named by General Whitfield that are not express articles at all?

A. Oh, no; they wouldn't be carried on passenger trains.

Q. You didn't understand him to be serious in asking that question?

A. No; not very.

Q. State if express companies in great centers like St. Louis don't have a limit within which they run these wagons, and beyond which they do not go?

A. I believe they do.

Q. You wouldn't go outside of the city altogether to get a package, but within that limit you would just as soon do it after you get ready as not, wouldn't you?

A. Yes, sir; we would. We will do it, and we do it; anybody that does otherwise, and handle their own goods and do it as a matter of choice, it makes no difference, if they so understand it.

1271 Q. You were asked if Col Soper was not in this Mississippi Valley Company; what did you mean by that?

A. Well, he was to have some personal interest.

Q. Was not his talk and object solely, in your conferences with him, to try to make more revenue for the railroad?

(Objected to, as leading.)

A. Oh, yes; he has always said they couldn't get anything more out of the express company, and he was of course willing to get more money for the railroad.

Q. If I understand you, to-day or yesterday, speaking of this stock and the various persons who were to have an interest in it, you qualified it by saying there never was any stock actually issued?

A. Of course; no stock printed.

Q. It was then talked of as so much money that was to be put in?

(Objected to, as leading.)

A. Yes, sir; it was just simply abandoned; it was laid down and thrown up, and that is the end of it; there may have been a great many things said about it, but it wasn't a live institution, and I am sorry I didn't pool with the Southern Express Company now.

Recross-examination by Gen. WHITFIELD:

Q. Did you sign that contract as president of the Mississippi Valley Express Company?

A. Yes, sir; I was to be the president.

Q. Under the present arrangement with the Iron Mountain Railroad Company, are not the employés of its express department authorized by the railroad company to establish the rules, and fix the rates and terms and conditions under and by which the
1272 Southern Express Company is admitted or permitted to ship over that road?

(Objected to, on the ground that the question is indefinite as to the persons referred to, and does not carry any intelligent meaning to the mind of the counsel for the defendant.)

A. Well, they consult, you know, with the road when they make these tariffs, and if the tariff is satisfactory to the road they don't make any radical change in anything without consulting with Mr. Soper as to what is going to be done; and we haven't got but one tariff that I know anything about, and that is for the whole public.

Q. Was Mr. Soper consulted about this order demanding special rates on pack parcels?

A. I don't know as to that; probably he was; I should have consulted him if I was going to make any change,

Q. Is it not left to the railroad express officials exclusively to dictate terms to the Southern Express Company for doing business over the Iron Mountain road?

(The foregoing question is objected to, because the road is not doing business for the Southern Express Company, but for the public.)

A. Well, I don't think they need any dictation; they don't surrender their charter—the road don't; the express is one of their departments; the express department attends strictly to the business of that department; they don't have any power to dictate; if there is any question there of bad policy, or anything that would be against the interest of the railroad company, they could not dictate about any absurdity.

Q. Have the railroad company ever required you to make any exactions or rules applicable to the Southern Express Company?

A. No, sir; I think not; they make one rule.

1273 Q. All rules applicable to the Southern Express Company doing business over the Iron Mountain railroad have originated with you, as the general manager of the railroad express department and the persons under you, haven't they?

A. We have made our rules and regulations for the whole public, including the Southern Express Company, but the rule requiring the Southern Express Company to prepay, if that is what you mean——

Q. I don't ask you about any particular rule.

A. Well, I suppose I had something to do with that myself, but I done that on consultation with the railroad people.

Q. Have you not, heretofore, been making any distinction between pack parcels, or parcels in sacks, and other freight of the same weight and character?

A. My understanding is, where we knew a sack contained parcels for different addresses we charged more than we would on the same weight of merchandise.

Q. That has always been your rule?

A. That has always been our rule; yes, sir.

Q. Then what occasion was there for this notice that I showed you awhile ago, issued in the last few days?

A. Because my understanding of that proposition and that agreement is, that whatever was to be taken at that rate was not to be distributed for them along the road, and was not to contain packages for more than one address; now, that is my understanding of it; that you shall not, in fact, when you start out commence distributing packages to the public out of one package containing numerous packages; if Mr. Aikin made any other agreeement than that I don't know anything about it.

Q. Then that order was directed at the Southern Express Company, was it?

A. I never saw the order until just now.

1274 Q. You say your express department never at any time has made any distinction or any rules in reference to the pack parcels that is not now in force; has it ever had any different rules from what it has now?

A. We have endeavored to keep the Southern Express Company from cheating us by packing a lot of stuff together as one package, and getting a lower merchandise rate; and we have tried our best to stop that sort of thing.

Mr. THOROUGHMAN: How have you succeeded?

A. Well, we have had finally to make a charge of more than the regular merchandise rate wherever they contain such parcels.

Q. And that, then, was the object of the rules you have made on that subject?

A. The object of the rule is to prevent people from putting fifty or sixty packages in one and transporting it as a hundred-pound package belonging to any one person.

Q. The Southern?

A. Or anybody; we want to prevent anybody doing it.

Q. If I go to a store here and buy me a coat and put it up in one parcel, and go to another store and buy me a pair of pants, and put it up in one parcel, and to a third store and buy me a warming-pan, and put it in one parcel, and then I put them all in a sack and carry them to your express to be shipped to Texarkana, would you charge me a separate rate on each one of the things in that bag?

A. No, sir; we would not; but if we knew of our own knowledge that you had packed up 150 packages in one package or box, upon which you charge the public or the owners thereof fifty cents or a dollar on each package, and then try to have us carry the whole thing for a dollar, where you would make a profit of sixty to seventy dollars on the bundle, we would try to defeat that thing some way.

Q. Then that was the object of the rule?

A. Yes, sir.

1275 Q. In point of fact, you adopted that rule or regulation along last summer, didn't you?

A. Yes, sir.

Q. Wasn't it adopted within twenty-four hours after Judge Treat made his modification of the injunction granted in this suit?

A. It was adopted long before that.

Q. Was it published before that time to the public?

A. Why we refused to take them in that shape; that is the way.

Q. Didn't you first exact three rates on sacks and pack parcels from the Southern Express Company within twenty-four hours after Judge Treat delivered his opinion upon the application for a modification of the injunction in this case; now, there is a question of fact, answer it; yes or no?

A. I think it was before, Mr. Whitfield, but I am not certain about that.

Q. Wasn't it put in force on the 12th of November?

A. I can't say.

Q. Do you think that that rule was exacted of the Southern Express Company, and of the other shippers, by the Iron Mountain Express, before Judge Treat's modification?

A. I don't know; it may not have been that identical rule, but some rule or other was made to prevent the shipment of parcels in sacks probably two or three months before that.

Q. Wasn't the rule before that time, that you had attempted to exact the listing of the contents of pack parcels?

A. Yes, sir; that is so; that is it.

Q. Wasn't this other rule adopted—now, since your mind is refreshed on the subject—within twenty-four or forty-eight hours after Judge Treat delivered his opinion?

1276 A. It may have been adopted very soon after; I can't tell exactly.

Q. Did you afterwards discontinue that rule?

A. I don't know as to that; I left here and was gone two or three weeks—a good while, right away after that decision; I think it was rendered Saturday morning, and I left Saturday night.

Q. You don't know whether it was discontinued or not?

A. No; I don't know.

Q. Didn't you adopt that rule in consequence of the opinion of Judge Treat upon the modification of the injunction?

A. That may have been the case.

Q. Was it not for the purpose of avoiding the effect of Judge Treat's injunction?

A. It was was for the purpose of getting our proper revenue out of those goods that anybody would ship in packages and bundle up, as I say—that is, for the purpose of getting our just revenue out of it.

Q. That is not answering the question.

A. That is what it was.

Q. Did Judge Treat's opinion have any weight or influence upon you in adopting the form of that regulation?

A. I did not adopt the regulation myself individually. I suppose that we would have considered the opinion of Judge Treat very carefully, no doubt.

By Mr. THOROUGHMAN: Will you now state the object you had in making the rule last named by Gen. Whitfield, establishing those rules in November last?

A. To get the proper revenue that belonged to us for transporting the goods put up in packages, which we believed were to defraud us out of our tariff—to get around our tariff.

Q. Do you know whether it was made before or after Judge Treat's modification order?

1277 A. I think we required a listing of these packages before, and I think it was probably made after; Mr. Aikin will know.

Q. Was it in consequence of that order, or to get what you state, the proper revenue for carrying——

(Objected to, as leading.)

A. It was far getting our pay for carrying this stuff; that is what it was for, and all the bearing it had.

Q. The object of the rule was, as you have stated, that you might not be defrauded of that which you were earning?

A. Of course, and at the same time to conform to the court's order.

Q. Not to stand in violation of the court's order?

(Objected to.)

A. Yes, sir.

Q. When the question was asked you by Gen Whitfield, did you understand the wording of the injunction enough to understand the force of it? He asked you if you did not make that order in consequence of the action of the court in that behalf.

A. Oh, no; I didn't say that; I said that we made it—my answer was that we made it to get the revenue that belonged to us under our tariff.

Q. And not in evasion of the order of the court?

A. Oh, no; but at the same time conforming to the order of the court; the object was to get the money out of the stuff carried.

Q. The object of the recross-examination has been, it seems to me, to get you to say—if that is not the object, that is the effect of the questions, at all events—to get you to say that you were promulgating rules against the Southern Express. You were asked if you had made any separate regulation as to that. State how the fact 1278 is in reference to your treatment of the Southern Express Company, and of the balance of the public?

(Objected to, as leading.)

A. Anybody that would come there and bundle up their packages, and sack them or box them up, we would consider it was an attempt to defraud us.

Q. To evade the regular tariff?

A. To evade the regular tariff, which is low enough; and we would adopt rules to protect ourselves with anybody.

Q. They were applicable, were they, to the public, or to the Southern Express Company? Just state which.

A. They were applicable to every one—to the entire public—but nobody tried it though but the Southern Express Company.

Q. Did anybody attempt to practice a wrong on you but the Southern Express Company; any shipper?

A. No other shipper presented any such freight in such a boxed-up manner.

Q. The object of the rule, I understand, was to protect yourself from such attempts?

A. That is the object of the rule. To collect the money properly due us, and to keep the shippers—the Southern Express Company or anybody else—from offering freight in that shape.

Q. Then the rules that were made subsequent to the order of the court were made for whom?

A. For the whole public, of course. We deal with the public; we don't deal with the Southern Express alone, and we don't contemplate to do it, but with the entire public.

Q. State if you have not a good number of other patrons in this city besides the Southern Express Company.

A. Oh, of course; numerous.

1279 Q. Numerous patrons other than the Southern Express Company?

A. Oh, yes; some very large shippers.

Q. And you have elsewhere throughout the country patrons other than the Southern Express Company?

A. Yes, sir.

Q. Will you have it understood on the record that you are making these rules, then, for the Southern Express Company, or for the general public?

A. They are made for the general public, as a matter of course.

Q. Being, however, suggested to your mind by the conduct of the Southern Express Company, isn't that it?

(Objected to, as improper.)

A. That is what brought it about; no other shipper attempted to present freight in the manner in which it was presented by the Southern Express Company, in regard to sacking and bundling and boxing, and all that sort of thing.

Q. You were asked by Gen. Whitfield, if you bought a coat at one store, and a pair of pants at another, and a warming-pan at another, and put them all together, whether you charge for the three separate?

A. Knowing it was one package for one person, we would charge for a single package.

Q. But if Col. Broadhead had a package, and should bring it to your office, and Mr. Shepley had a package, and should bring it to your office, and Gen. Whitfield had a package, and should bring it to your office, although the three might have a common destination, you would charge for the three packages, would you?

A. Yes, sir.

Q. How would the Southern Express Company handle those three?

1280 A. They certainly would charge for all three persons.

Q. That is the distinction you want to preserve?

A. Yes, sir.

Q. That where one individual brings a package composed of however many articles you would call it one package, and if a party brought you different packages you would call them different packages?

A. They would be different packages.

Q. You would call them just in the nature of the thing?

A. Just what they were; if one man brings a package there, and it is his, why, it is one package; but if three men bring a package each, then it is three packages, and each would be charged according to it.

Q. If I understand you, your answer to Gen. Whitfield was, that you could not give the date of the making of these various rules in reference to the three-times and the six-times charge, etc.?

A. No; I can't fix the date from memory.

Q. Who would most likely know and give information in regard to the dates of these?

A. Mr. Aikin would.

Q. He was the active man in the promulgation of those rules, was he?

A. Yes, sir; I was away when that last rule was made.

Q. He could tell why they were made?

A. Yes, sir.

Q. In making these various rules with whom did you consult?

A. We consulted with the railroad company.

Q. Who do you mean by "we"?

A. Well, Mr. Soper consulted with Mr. Allen, of course; a great deal with the proper authorities.

Q. If I understand, these consultations took place on occasions that required change?

A. Every change, I think every one, there is a consultation.

1281 By Mr. **Whitfield**: Did you ever know a single instance on which the Southern Express Company made a charge on a pack parcel; you stated they would?

A. I stated that I supposed they would; I don't know that the Southern Express did, as a matter of fact, or not; but I suppose they would; we would.

(Signature waived.)

(By consent, the further taking of testimony is adjourned until to-morrow, April 23d, at 10.30 a. m.

1282 St. Louis, *April* 23, 1881.

Parties met pursuant to adjournment.

J. H. Morley, of lawful age, being produced, sworn, and examined on the part of the defendant, testified as follows:

Direct examination by Mr. Thoroughman:

Q. I will get you to state what is your profession?

A. Civil engineer.

Q. How long have you been a civil engineer?

A. I date back my experience to 1845.

Q. In what part of the country have you been principally engaged as civil engineer?

A. Principally in the West.

Q. In railroading, has it been, principally?

A. Principally; yes.

Q. On what roads have you practiced your profession—what lines of roads in the West?

A. On the Missouri Pacific, Terre Haute & Alton, the North Missouri, and the Iron Mountain, principally.

Q. What portion of the time since 1845—since you began—have you devoted to your calling; about what proportion have you been actively engaged as engineer?

A. Well, probably ninety per cent.

Q. How much of a road, in length, is the Iron Mountain railroad?

A. It is about 685 miles, with all its branches.

Q. What are you engaged in at the present time?

A. Chief engineer of the Iron Mountain railway.

Q. How long have you held that position?

A. I commenced in 1853 in that position; I have not been engaged all the time, however, since.

Q. How long have you been engaged since your last connection?

A. About two years.

1283 Q. What interruption was there between the former engagement and this last one; how many years?

A. That was the fall of 1875 to the spring of 1879; about three and a half years.

Q. You are now civil engineer in charge of the entire work of the road?

A. Of the new work; yes, sir.

Q. Were you familiar with the running of the road before 1875?

A. I acted as superintendent two years, of the Iron Mountain railroad in Missouri.

Q. What years were those?

A. 1868 and 1869.

Q. Are you acquainted with the grades of the Iron Mountain railroad?

A. Very well.

Q. What are they in reference to the average roads running east and west across this country; are they smaller or greater?

A. About the average I can't say; but it has heavier grades than most roads, and it has longer stretches probably of light grades.

Q. Tell me what the highest grade is on this road; how many feet?

A. One hundred feet to the mile.

Q. Is it 100 feet to the mile, or 104 feet; do you mean to be accurate when you say 100?

A. Yes; it is 100.

Q. You are familiar, of course, with the cost of running a road, as well as the cost of construction?

A. Somewhat.

Q. You built the Missouri Pacific from here to Jefferson City, did'nt you; it was under your supervision?

A. No, sir.

Q. A portion of it?

A. I was engaged on the construction between here and Pacific, thirty-seven miles.

1284 Q. Much of the Iron Mountain railroad, however, was built under your direction as chief engineer; wasn't it?

A. Yes, sir; all except the branch from Poplar Bluff to Cairo.

Q. Now, I will get you to state the cost of the construction of it, as near as you can.

(Objected to.)

A. Well, the construction and equipment of the 600 miles of new work, the cash cost of construction and equipment was about $30,000 a mile.

Q. What is it worth now per mile?

A. Just at this time it would be about the same, I should think; there have been times it could have been built, since it was built, cheaper.

Q. Have you made any calculation in your mind, or otherwise, as to the cost of running trains on the Iron Mountain railroad, passenger trains, where light freight matter was carried, commonly called express matter?

A. The accounts have been kept separate of passenger trains from the freight, and it would be difficult to tell exactly; you might say, passenger trains seventy-five cents a mile.

Q. How many cars would that comprise?

A. About five cars, averaging.

Q. Have you thought upon this subject so that you can speak as to the comparative cost of carrying freight on passenger trains and on freight trains?

A. Yes, sir; it costs more on passenger trains.

Q. Can you tell about what per cent. more?

A. I don't think I could get at the facts of the case.

Q. I don't mean to be accurate, but to the best of your judgment.

A. You might say, owing to speed, it would be fifty per cent. more; the increase of speed.

Q. Which can serve the public for less money, a railroad
1285 running in the Mississippi Valley, on the west side of the

Mississippi river, through the country just as it is, a new country, or a railroad running from St. Louis east, taking the state of the case as it is, where it is a densely populated country; which one of those roads transports persons and property cheapest; for the least money per ton per mile?

A. Roads from St. Louis east; unquestionably.

Q. Could you, as an engineer, take a freight list on a road running from St. Louis to New York, and by that form any kind of correct judgment as to what should be charged running from here to Galveston, Texas, any approximate figure that would satisfy your mind at all?

(Objected to, as leading, argumentative, and improper.)

A. In the absence of statistics, relying upon my own judgment?

Q. Yes; that is what I want.

A. Well, I should say it would cost at least twenty-five per cent. more between here and Galveston; at least that.

Q. Are you enough conversant with the business of the Ohio & Mississippi railroad, or the Vandalia line, so as to be able to tell us what would be a fair compensation on either of those roads for carrying common freight per ton per mile?

A. No, sir; I am not.

Q. Nor could you answer the question any better as to the express matter carried on those two roads?

A. No, sir.

Q. You acted as superintendent of the Iron Mountain railroad from 1867 to 1869, was it?

A. 1868 and 1869; in the years 1868, 1869, and 1870, about two years.

Q. What express business, if any, was done on the line of the road at that time, and by whom was it done?

1286 A. It was done by the railroad company at first, when I first acted as superintendent; but during my career as superintendent it was changed to the Southern Express Company.

Q. During your administration as superintendent, the express business was given up by the railroad company and turned over to the Southern Express Company?

A. Yes, sir.

Q. How long prior to that had the Iron Mountain done its own express business?

A. It commenced, I think, the time Mr. Allen came in possession of the road, in February, 1867.

Q. And continued on down during your administration, in 1869, when it went over to the Southern Express Company?

A. Yes, sir.

Q. Was there any difficulty, or any reason discovered by you during the time that the Iron Mountain Railroad Company was doing its own express business, why it could not serve the public as safely, expeditiously, and conveniently as any other express company?

A. It could, the through business.

Q. Sir?

A. The through business, it could; and it could have commanded the facilities to do it all.

Q. The local business as well?

A. Yes, sir.

Q. If it had the horses, wagons, and agents to do the local business, then it could have done that, do you mean to say?

A. The road was new, and we hadn't station facilities.

Q. That is what you mean by saying it could do the through business?

A. Yes, sir.

Q. Now that it has station facilities, is there to this day any reason on earth, that you know of, why the Iron Mountain Railroad 1287 Company cannot as safely and expeditiously serve the public, in all respects, as to express matter, as well as the Southern Express Company, or any other express company?

A. No, sir; and with better responsibility.

Q. You knew something of the business as transacted on the line of the road by the Southern Express Company after it came on?

A. Yes, sir; I do.

Q. Do you know anything of the business now as done by the Iron Mountain Railroad Company since May last—since the company organized an express department of its own?

A. I am not familiar with the details of the work; it is out of my province; it is not in my line now, and I should refer to the annual report for information.

Q. Now, if the annual report shows anything in reference to the matter about which I am speaking, as to what the company derived from the express business under the contract with the Southern Express Company, and what it has derived since it started its own express business, I would like for you to speak of that subject, and tell us what you know.

A. My information is that it has about doubled the receipts of the express.

By Mr. SHEPLEY: Are you speaking of what you know, from what is contained in the report, or what you know yourself?

A. From what I get in the reports of the officers; I am not supposed to know.

(Objected to.)

By Mr. THOROUGHMAN: You are not in active connection with it?

A. No; even then I should go to those reports; no one could get the information without going to the reports, and I get this from a summary of the report.

Q. From that you make the answer that you think the increase is how much?

A. It is about double.

1288 Q. The receipts now of the railroad company, from its own express business, over what it was when it was done under a contract with the Southern Express Company are about double, you think?

A. Yes, sir.

Q. Your residence is in this city?

A. Yes, sir.

Q. You meet and associate with our citizens generally—merchants and business men—don't you?

A. Yes; and along the line of the road; the patrons of the road; I am down the line of the road a great deal.

Q. Now, with what satisfaction to the public is the business of the express department of this road conducted, as far as you know?

A. I never heard but one opinion.

Q. What is that opinion?

A. That they are glad to see the Iron Mountain Express, as it is called, come on the road.

Q. Now, shall we understand from that that you mean the public mind, as far as you know, is satisfied with the service rendered?

(Objected to.)

A. That is what I mean.

Q. Your associations along the line of the road and in the city are principally with whom, in reference the patrons of the road?

A. All kinds of people, patrons of the road and otherwise.

Q. Mr. Morley, do you know any other roads in the country that are doing their own express business; have you any knowledge of other railroads in the country, for instance the Ohio & Mississippi?

A. No; I don't know of my own knowledge; it is only reports of others that I understand.

Q. I will get you to state if you know anything about the comparative cost to the public of the express business as now
1289 being done by the Iron Mountain railroad department, and that charged against the public by the Southern Express Company; have you any knowledge upon that subject.

A. I understand the rates are lower to the public.

Q. You mean the rates of the Iron Mountain are lower than the Southern Express Company?

A. So I understand; lower than the rates of the Southern Express Company; at the same time the Southern had reduced its rates.

Q. I will get you to state if the Iron Mountain railroad can serve the public as expeditiously and with greater safety and for less money than the Southern Express Company did serve the public, and if it has the capacity to do all the express business over that line.

A. It certainly has.

Q. Now, what is the necessity for the existence at all of the Southern Express Company?

(Objected to.)

A. I think it might be called a supernumerary.

Q. I will get you to state if there has been any other than the Southern Express Company that has done an express business over the Iron Mountain railroad in its history that you know of.

A. None that I know of.

Q. Has there ever been any competition, as far as you know, between the express companies over the Iron Mountain railroad?

A. I know of none, unless the Southern Express and Iron Mountain together.

Q. You mean unless it is originated by this litigation—just come into existence by this litigation, or before this?

A. Yes, sir.

Q. Do you know anything about the territory occupied by the various other well-known express companies of this country, the Adams, American, and United States?

1290 A. I am not familiar with that territory.

Q. But you do know that the Southern Express Company did the express business over the Iron Mountain railroad line until the company concluded to erect an express department of its own?

A. Yes, sir.

Q. You know what the Southern Express Company, under its contract, was paying the railroad company for the facilities furnished under that contract, don't you?

A. I know about what it was originally; I am not familiar with the contract since the extension of the road into Arkansas and Texas.

Q. Well, now, I want you to state what you know about whether the prices paid for that facility, or the facilities that were afforded, were adequate or not—whether it was sufficient pay, in your judgment, to the railroad company.

(Objected to.)

A. I think the running of the express car on all the trains of the Iron Mountain railroad in which it was run, in the year 1879, when the express receipts appear, independent of the Southern Express Company—I think those expenses were equal to the receipts; not less than the receipts I will say; I make it more.

Q. You, yourself, make it more?

A. Yes, sir.

Q. That the expense of the facilities that were given them was equal to all that was got from them?

A. Yes, sir; that is what I mean.

Q. Well, then, of course it was inadequate, is what you mean, is it not?

A. Yes, sir.

Q. You are familiar with the interchange of merchandise between railroads, are you not?

A. Somewhat.

1291 Q. From the beginning of the history of railroads in this country, the connecting lines have always shipped through, have they not, from one to another?

A. Generally.

Q. That has been the case with all branches as far as you know, has it not?

A. Yes, sir.

Q. It is true as to all express matter, as well as freight, is it not?

A. Yes; generally speaking.

Q. What has been the usage of railroads in this country, as far as you know, with reference to giving what are called through bills of lading? Has it been customary, or not, to give such bills of lading?

A. It has been customary.

Q. Any given quantity of matter going from St. Louis to New York would necessarily go over two or three railroad lines, would it not?

A. Yes; it would.

Q. The same rule, I believe, obtains as to express matter, does it not, also, between different express companies?

A. I understand so; yes, sir.

Q. Is there any reason that you know of why the Iron Mountain railroad express department cannot as safely and conveniently carry public money as the Southern Express Company over the line of the Iron Mountain railroad?

A. I know of no reason why it cannot.

Q. Do you know of any reason why the Iron Mountain railroad express department cannot as safely, conveniently, and as expeditiously carry the census returns over the lines of this road as the Southern Express Company? Is there any reason why the census returns cannot be safely carried over the line of the Iron Mountain railroad?

A. Yes; they can carry anything as cheaply and as expeditiously as any other company.

1292 Q. Suppose a man at Texarkana has a quart of strawberries to send to St. Louis; I have heard it said that you cannot safely send them by the Iron Mountain railroad express department, but that if he would give it to the agent of the Southern Express Company, and put the agent and the strawberries on the same road, that it would go all right. How is that, if you please, sir?

A I think an express man loves strawberries as well as a railroad man.

Q. Now, is there any reason why it could come more safely if the road has to bring the agent and the property, too, in the hands of the agent, than if it was in the hands of the railroad company itself?

A. I know of no reason why they could not come as safely by the railroad express as the other.

Q. I have a memorandum here concerning the station-houses, etc., along the line of the road from here to Texarkana, and from here to Belmont. Complaint has been made that we deprive the Southern Express Company of room, that they before last May. had. If you know of any place along the Iron Mountain railroad, any station, any office or warehouse, or shed or booth, or anything that the Southern Express Company had the use of, that this company did not need, and has not needed, since last May, I wish you would tell us where it is.

A. I am not familiar enough on that point to answer that.

Q. Are you familiar enough with the express business, as an independent business, to speak on the subject of accessorial service at all?

A. That is a question I had not investigated or thought much upon; I did not suppose it amounted to much on the line of the road, however. The stations are all convenient to the towns, the towns are built around the stations, and people naturally come to the depots for the express matter. They are nearly all new towns, all around the depots.

1293 Q. What is the present condition as to horses, wagons, stations, drivers, etc., of the Iron Mountain railroad express department, to do the business over the line of the railroad, the express business? I wish you to speak of the equipment, if you know what that is.

A. I am not familiar on that point; I have not paid any attention to it, in fact; I have simply seen the wagons pass through the streets here and at Little Rock. I never heard any complaint, I will say that, as to the facilities.

Cross-examination by Mr. **Whitfield**:

Q. I understood you to say that you are the original engineer of the Iron Mountain Railroad Company?

A. That is correct.

Q. Do you have anything to do with the transportation at all?

A. No, sir; not now.

Q. Then if there were complaints, it is not likely they would be made to you, is it?

A. No, sir; not officially.

Q. Is there any reason why they should be made to you individually?

A. People will talk, and you hear things when you are not solicited to hear.

Q. You say there are some heavier grades and longer stretches of light grades along the Iron Mountain railroad than upon the roads leading east from St. Louis?

A. Yes, sir; I said the average roads; I was not particularizing any particular road; I said the roads between here and Eastern points.

Q. Well, does not the longer stretch of light grades counteract the disadvantage of the heavier grades to some extent?

A. I think our road has the compensating advantage of the light grade, so that it would average pretty well with the Western roads on grades.

1294 Q. What do you mean by Western roads; those of which Mr. Thoroughman spoke in your direct examination?

A. Between St. Louis and the East, and roads extending west of here to Kansas, I might say.

Q. You mean to make a comparison equally with the roads extending east and west from St. Louis?

A. Yes, sir.

Q. You say the cost of construction and equipment of the Iron Mountain railroad is about $30,000 per mile?

A. I said that; yes, sir; I said cash that went into the work. I didn't go into the items of interest, discount, and other contingencies accompanying the building of these roads, which make it much higher.

Q. Did you speak from your personal knowledge, or from an examination of the books and accounts, or from a valuation of the road as you find it?

A. I spoke from my own knowledge of the cost of construction.

Q. And you say the road is 685 miles long?

A. About that, sir.

Q. By construction and equipment I suppose you mean everything necessary to put the road in its present condition for operating?

A. No, sir; I don't.

Q. What do you mean?

A. I mean at the time it was opened. Since then there has been a large addition made in steel rails, and in equipment and station facilities. How much these cost I am not able to say.

Q. When was the road completed?

A. The final completion was the 20th of March, 1874, of all the lines they now operate.

Q. Has there been any cash subscription of capital since the completion?

(Objected to, as immaterial and irrelevant.)

1295 A. I would not know if there had been, and I don't know; that is, I might know if there had been, but I don't know of any cash subscription.

Q. You would probably know, would you not?

(Objected to, as it would not be evidence if he knew.)

A. I would probably know of cash subscriptions of capital stock?

Q. Yes; since its completion.

A. No, sir.

Q. You say that it costs fifty per cent. more to carry on a passenger train than on a freight train; can you give your reasons for your estimate?

A. I gave the reasons; in consequence of the speed; I gave the reason in connection with it, I think.

Q. I don't know that it necessarily follows that in consequence of speed it costs more to carry freight upon one train than another. I would like to know why the speed makes a difference of fifty per cent.?

A. Wear and tear, besides the increase of motive power. Everybody knows that a fast train costs more than a slow one that knows anything about railroad transportation.

Q. Have you or your railroad what are called fast trains, as distinguished from others?

A. Yes, sir; you might say so—through freight trains; they don't stop so long at stations; don't stop at every station; for that reason they go over the road quicker. I don't know as there is much difference in the rate per mile.

Q. Is there any difference in the rate per mile?

A. I can tell by the time-table between the different freight trains; between the different classes of freight trains. If I understand you, the question is, is there any difference in the speed.

Q. Yes, sir.

A. That is, miles per hour?

Q. Actual speed; velocity.

1296 Q. Yes, sir; I don't know as there is any difference in the speed when actually moving.

By Mr. **Thoroughman**: Do you mean charge or speed?

A. Speed of the train, rate of miles per hour; if there is any difference I don't know it; but over the whole road there is a difference for the reason that I mentioned.

By Mr. **Whitfield**: Have you as much competition on the Iron Mountain road from parallel, or other railroad lines, as any one of the railroad lines running east from St. Louis has?

A. Well, it depends upon the nature of the business somewhat; we have not as many railroads to destination; take Galveston and some other points in Texas, you might say we have the competition of several lines, but we have more local points that we have not competition with.

Q. Have you not fewer competitors for distant points?

A. Than what line?

Q. Than the Eastern lines.

A. Eastern lines on the average through?

Q. Yes, sir.

A. As to the amount of business, I don't know but we have as many competitors, considering the amount of business.

Q. I ask the question independent of the amount of business.

A. Well, if we put up a ton of freight here, for instance, to go to New York—if it was announced that a car-load of freight was to go from here to New York, there would be more lines after it than there would for a ton from here to Galveston and to points in Texas, if that is what you mean; but taking the number of tons into consideration, going to New York and Galveston, I doubt but what we might have as much competition as though in New York.

1297 Q. How many competing lines are there from here East?

A. I have never figured them up.

Q. There are as many as four or five, are there not?

A. Over five, I believe; yes, sir.

Q. How many competing lines are there from here to the State of Texas?

A. To the northern boundary of Texas there are two.

Q. Name them, if you please.

A. Lines running West of here in connection with what is known as the Missouri, Kansas & Texas, and there is the Iron Mountain line; but Texas points are reached from here by other lines, through the river, and railroads east of it, by way of New Orleans, or Gulf.

Q. What difference is there in the length of these two competitors? In favor of which is the difference?

A. To the Texas boundary the Iron Mountain is the shortest.

Q. About how many miles?

A. It is my recollection, about 140 miles shorter than the Missouri Pacific.

Q. How many roads have you at your Texas terminus, connecting?

A. We have three; you may call it three.

Q. How many connecting roads are there at the Texas terminus of the other line?

A. They have only one at the boundary; but it soon spreads out as they get South; our own spreads out into four as we get over the boundary.

Q. Well, then, you have a very considerable advantage in competing with these other lines to Texas, have you not?

A. We have always claimed that we had; never heard it disputed.

Q. Does not the fact that the railroads running East from
1298 St. Louis have a great number of competitors, and the fact
that your railroad running to Texas has but one competitor, and that at a great disadvantage, in a great measure compensate for the disadvantage of the sparse population along the line of your road, in comparison with those Eastern roads?

A. It has compensating advantages; I am not prepared to say that it is equalized.

Q. Did you consider that compensation in saying that it costs twenty-five per cent. more to carry freight on your road than it does on the Eastern line?

A. There are a good many little details that enter into the cost of operating a road in a new country more than in an old country; you should take that into consideration.

Q. Can't you get rails delivered here for about the same that railroads East get them?

A. Well, that depends upon where the rails come from altogether.

Q. Buying in the market—I mean general market—you didn't confine yourself to any one market in purchasing rails; I suppose you buy from across the ocean sometimes?

A. They have rolling-mills between here and New York, where they get some of their rails, right on the line of the road.

Q. You have, also, haven't you?

A. We have one now; but not when the road was built.

Q. I am speaking of now.

A. We have now.

Q. You have inexhaustible mines of iron along the line of your road?

A. Yes, sir; we claim so.

Q. And coal?

A. No coal.

Q. The cost of rails is not greater on one road than on another, is it?

A. The difference would be the cost ot transportation from
1299 where they are made; our road got most of its rails by the
way of New Orleans when it was built—that is, the Arkansas
portion—when it was built.

Q. How about the cost of timber along the line of your road, compared with roads running East from St. Louis?

A. We can beat them all for cheap timber, and good timber.

Q. So, then, you have much less cost for cross-ties, construction, and bridge timbers, than the roads running East?

A. I can't say that; labor was very high when we were building the road.

Q. I am talking about timber now.

A. Yes, sir; but the labor to prepare that timber, and the structures, won't compensate for the cheapness of the timber.

Q. I will come to that directly, if you will answer that question as to the cost of the timber itself.

A. The cost of the timber in the tree was less.

Q. The cross-ties and bridge timber are a very considerable item in the cost of operating a railroad, isn't it?

A. Yes; quite a large one; but that has a compensation again on our road, which brings it back even, or nearly so.

Mr. Thoroughman: In what?

A. The timber is decaying every day in the year on our road, but in the North on the roads between here and New York they are frozen up from four to six months in the year, and that arrests decay; and then they have better ballast, when it comes to the ties, and they last longer on that account; so that, on the whole, our cheaper timber has that against it to bring it nearer even—the cost of keeping up the road.

Q. So, then, you say that the cost per mile for cross-ties on your road every year is about the same that it is on the lines running
East from St. Louis?

1300 A. No, sir; I don't say that quite; the first cost of ties is
much less; taking the keeping, maintaining the road, and
the renewals into consideration, there would not be so much difference; and it might be in favor of the Eastern roads—some of them.

Q. How much higher wages do you pay for the same class of labor than is paid by railroads running East from here?

A. I am not familiar with the rates of wages enough to answer that question; the superintendent can do that; have not investigated, but I am certain it is a little higher on our road.

Q. You are certain it is a little higher?

A. Yes, sir.

Q. You know that fact of your own personal knowledge?

A. Yes, sir; I know the men; it is harder to keep them in such sparsely settled countries; they are restless and moving a good deal; while on the other roads some men will stay for years; it costs more to live, and it is more sickly, and, in consequence, they won't work unless they have higher wages.

Q. Is there any additional reason that you can give why it is worth twenty-five per cent. more to carry freight on your road than it is on Eastern roads?

A. Yes; there are additional reasons; our track has not been as perfect as the Eastern roads, which is a matter of great importance for cheap freights. Our track has not been as well ballasted as the Eastern roads, and there are many details in connection with the running department that go to increase the cost; taking the men on the rolls, they are shifting about a good deal. On the Eastern roads a man holds his position for years; but here they are restless, owing to the sparsely settled country they go through; they don't have as good a time.

Q. Why did the Iron Mountain Railway Company abandon its express department some years ago, at the time you mention?

1301 A. Well, I think it was because Mr. O'Brien talked them into adopting the Southern Express Company; they didn't care to run two then.

Q. Were you present at the talk?

A. I was.

Q. Wasn't it shown to the satisfaction of the railroad officials at the time that they would receive as much or more profit from the business from the service performed by the Southern Express Company as they were receiving from it as operated by themselves?

A. Well, theirs was a new route from here to Belmont, and he had the Southern Express Company extended pretty generally over the South; he was running to St. Louis, through the Adams, from Columbus or Cairo; his station agents were all through the South, and the station agents all through the South were generally express agents; and the Iron Mountain railroad was not advertised through the South, and Mr. O'Brien claimed if he could let his express—if we would take his express over our road, that it would be a good advertisement, and it would make the road known all over the South, and would send a good deal of travel and freight this way to St. Louis; that is what he claimed would be the advantages.

Q. The contract was made with Mr. O'Brien, was it not?

A. With Mr. O'Brien, the representative of the Southern Express Company, in the talk I refer to; but who signed the contract, I don't know; it was not made in my presence.

Q. Was not the contract, in fact, with the Adams Express Company, and assigned to the Southern Express Company some time afterwards?

A. The Adams Express Company's agent at Cincinnati—I have forgotten his name—was present at the time of this conversation at Mr. Allen's house; I know the two always worked together; I don't know which made the contracts, but I suppose the records will show; but we always called it the Southern Express Company.

1302 Q. Why do you say that the Iron Mountain express department can serve the public with a greater degree of responsibility than the Southern Express Company?

A. Because we have got the property—the whole distance—to make good any loss; but I have never seen anything but a few horses, wagons, and desks, and a few safes—all the property on the line of the road belonging to the Southern Express Company; and when packages come over the road and get lost there would be nothing to attach; but the Iron Mountain Railroad Company have cars and rolling stock, and everything; and there is where I say there is responsibility.

Q. Do you know anything, of your own personal knowledge, of the responsibility of the Southern Express Company—what property it has, and what resources liable for debt?

A. If they have any property, I don't know where it is.

Q. That does not answer the question.

A. I answered it before; I said they had some horses, wagons, and safes, that I called theirs; if there is anything else, I don't know it.

Q. Are you in a situation to know if they, in fact, do have any other outside of that?

A. I think I should know it if there was anything on the line of the railroad where they do business; I think I am in a situation that I should know it; they might have some property foreign to the road and I not know it.

Q. I ask the question irrespective of the line of your road, which I assume is not the only road over which the Southern Express Company operates,, or the only road along which the Southern Express Company might own property.

(Objected to, on the ground that you have to assume that in this litigation.)

A. I am in a situation to know whether they have property outside of this road.

1303 Q. Or anywhere else in the broad, wide world?

A. I am not, outside of the Iron Mountain railroad.

Q. Then your statement that the railroad company affords a better responsibility to the public than the Southern Express Company, is made without any knowledge of the responsibility of the Southern Express Company, is it not?

(Counsel objects to the form of the question.)

A. As a question of property responsibility, outside of the line of this particular road, I know nothing of it.

Q. What is the amount of the mortgage debt of your railroad; is it not thirty millions?

(Objected to, as irrelevant and incompetent, for the reason that the debt could cut no figure in a case of the loss of property; that the whole property would be bound first for any debt.)

A. No, sir; it is about twenty-two millions.

Q. What does this thirty millions refer to, as a debt?

A. That is the indebtedness of the road in bonds; you asked what the mortgage debt was of the road; there is over eight millions that is income bonds; I don't call that mortgage.

Q. Isn't it secured by mortgage?

A. No, sir.

Q. Just simply evidence of indebtedness issued?

A. Well, I don't know about that.

Q. Then these bonds called income bonds have no security whatsoever, except a general liability of the railroad, have they?

A. They stand rather in the light of preferred stock; I never knew any mortgage for them.

Q. Why do they call them income bonds?

1304 A. The net earnings are pledged to pay the interest before anything goes to the stock; we don't call them mortgage bonds.

Q. What is the outstanding bonded indebtedness of your road?

A. Well, I would have to answer as before—about twenty-two millions; let me understand that; taking out the eight millions income bonds, there would be about twenty-two millions; but if you call this indebtedness, it would be thirty millions.

Q. Are not the income bonds, or bonded indebtedness, a debt in the form of a bond?

A. That would be something for the attorneys to argue; if that stock did not earn anything, there would not be anything; now if a road earns nothing over the interest on the mortgage bonds, they are not compelled to pay these; these are worth 86 and 95—quoted—these income bonds.

Q. Do you know, of your own personal knowledge, that the rates of the Iron Mountain express department to the public are lower than the rates of the Southern Express Company were?

A. I know but little about it of my own personal knowledge; I have seen these tariffs posted up, but I don't remember what they were, as I paid no particular attention to them.

Q. You said there was no competition until the railroad company created an express department; is there any reason that you know why there might not have been competition on the line of this road?

A. No; I don't know why there should be any competition when they had it all one way; they could not compete with themselves; there was not anything to compete with, unless it was the freight trains and the freight rates.

Q. I did not ask if there was competition, but I asked if there was any reason why there might not have been competition?

1305 A. There might have been some other express company on the road, for anything I know; for instance, there might have been a wagon line, or they might have carried their express matter on horseback, or various other things; there might have been competition.

Q. If the Iron Mountain Railroad Company has the right to exclude all other express companies from the line, and do the business only themselves, could there be any competition in the express business over the Iron Mountain railroad?

(Counsel objected to the assumption that the Iron Mountain railroad has the right to exclude every other express company from the line; that they never sought to do it and don't want to.

A. They would have had it all their own way in such a case, that is evident.

Q. You stated that the expense of the facilities afforded the Southern Express Company for the year 1879 exceeded the railroad receipts from that source for that year?

A. Yes, sir; I did.

Q. How much were the receipts for that year from the express?

A. I gave the auditor's statement as my authority—$65,000.

Q. How do you figure out that it actually cost the Iron Mountain Railroad Company more than $65,000 for the facilities it extended to the Southern Express Company for 1879?

A. Mileage of the express car and the cost of it.

Q. Have you made a calculation?

A. I have, approximately.

Q. What part of the average passenger train did you estimate that express car to be?

A. About one car at a train; either the fifth or sixth, as the train might be made up.

Q. You estimate, then, that the expenses of the railroad company in furnishing facilities were one-fifth or one-sixth of the cost of running a passenger train?

1306 A. No, sir; one car in five or six, but I did not estimate that it was one-fifth or one-sixth of the train; it is a little less than that.

Q. It was a little less than that?

A. Yes; I suppose you can jot my judgment down on that matter for what it is worth; but you can have it from those who are more expert in the cost of running a car per mile than I am.

Q. What was your estimate of the cost?

A. About seventy-five thousand dollars.

Q. Per mile per car?

A. Furnishing these facilities of the car.

By Mr. THOROUGHMAN: How many days in the year?

A. Three hundred and twelve days.

By Mr. WHITFIELD: Do you make the estimate on one car each way a day, or on two trains each way?

A. A passenger train, the mileage on the road, outside of the Carondelet train, is about 2,900 miles; I estimate about 2,200 of that, however, for an express car.

Q. You estimated that one express car was hauled 2,200 miles a day?

A. Yes, sir.

Q. Now, then, will you please give the details by which you arrive at this result?

A. I think that is the whole thing there; that it could be cyphered out on the 2,200 miles and 312 days.

Q. And that $75,000 would result?

A. That is the result; you can get details in any shape you want out of those figures; you can get your dividend, divisors, multipliers, and multiplicands.

Q. Will you please state how you reach the result that the transportation of one express car 2,200 miles a day for 312 days cost $75,000 a year?

A. It will make somewhere about fifteen cents per mile run of a car, and any railroad man will say that is the minimum on a passenger train.

1307 Q. I think we misunderstand each other; my question is this: How do you arrive at the result that the services you rendered for the year 1879 were worth $75,000, you assuming that it is worth $75,000?

A. I said I made it that; I didn't say it was that; I made it that. I said first that the revenue derived—just about $65,000—did not pay the expenses of the car. That is what I said.

Q. But that is not the result I am seeking; I wish to know the calculation, or process of the calculation, by which you arrived at the result that the hauling of that car 2,200 miles a day for 312 days in the year 1879 cost the railroad company $75,000?

A. Two thousand and two hundred miles multiplied by 312 days gives the mileage per year; you divide $65,000 by that mileage and you get the cost per mile run of the car; you may divide it by $75,000, and you get the cost per mile run for that; now, anywhere between those, as I said, I made it $75,000; but you can get the cost per car per mile. You can submit that figure to any railroad expert, and see whether it is too much or not.

By Mr. **Thoroughman**: The result being between fourteen and fifteen cents per car per mile per day the cost of running; that is the question to be determined by the expert; whether it is too much or not?

A. Yes, sir.

By Mr. **Whitfield**: The elements or factors of your calculation, then, are one express car hauled 2,200 miles a day, for which the railroad company receives the sum of $65,000 for one year of 312 days?

A. Yes, sir.

Q. And you say that will approximate about fifteen cents a mile for a car; am I correct in that assumption?

A. Yes, sir; if there is no error in my figuring.

Q. Did not that car which you call the express car in fact
1308 carry other than express matter; did not, in fact, in the year
1879, the Southern Express Company occupy only a limited
subdivision of that car?

A. It might; I am not posted enough to say it did not.

Q. Your estimate is based upon the assumption that the Southern Express Company occupied the entire car, is it not?

A. That the company derived no other benefit from the car; it is based upon that. They might have half occupied the car, or a quarter, and still run in the express company's interest.

Q. You don't know how the fact was?

A. No, sir; they might have had more than one car in the fruit season.

Q. If, in fact, the Southern Express Company only occupied one-third of the express car, and the other two-thirds was occupied by the railroad company, or persons paying compensation therefor to the railroad company, the result of the estimate of the cost of furnishing the express company the railroad facilities would be materially different, would they not, from that you have just testified to?

A. Unless compensated for by putting on more cars at certain seasons of the year; more than one car; I assume that to be the average of one car a day.

Q. You have assumed that to be the average?

A. Yes, sir.

A. You don't know whether it is the average or not, do you?

A. I do not.

Q. When you speak of express receipts, or revenues derived by the railroad company under its present express system, as compared with revenue derived under its contract with the Southern Express Company, did you mean the net revenues or the gross revenues?

A. I meant what was published in the annual report here, which
I suppose in the one case is net and in the other the gross;
1309 that $121,000, whatever it is; I don't know what portion of
that, of course, would have expenses contingent to it to be
deducted.

Q. Your language, as near as I can recollect it, was that the increased receipts derived by the railroad company now are about double what it got from the Southern Express Company?

A. According to the report.

Q. And from these increased receipts are to be deducted the cost of doing business by the railroad company, which it did not incur when the Southern Express Company alone was doing the business, is it not?

A. It would seem so, but I don't know whether it is net or gross; I refer to the published report; I had no hand in making it up; I took my figures from this report—the auditor's report.

(The testimony of this witness upon this point in his direct examination is objected to by plaintiff's counsel, because it appears that his testimony was not upon his personal knowledge, but upon the report, which he did not offer in evidence.)

Q. The fact whether it has greatly increased the receipts—resulted in an increased net receipt to the railroad company—is dependent upon the estimate of the cost to the railroad company of doing the business that it did not incur when the Southern Express Company alone was doing the business, does it not?

A. It would so appear.

Q. Do you know, as a matter of fact, whether or not the net earnings of the railroad company under its present express system are more than they were when the Southern Express Company was doing the business alone?

A. I did not know anything about the earnings, only what I took from the auditor's report.

Q. Is it not the case that there has been over your road, in conse-
quence of extraordinary commercial prosperity, an extension
1310 of connecting roads, abundant crops, and other causes, a
largely increased volume of traffic for the last twelve months?

A. I believe it due to commercial prosperity; but I don't know that there is any increase for the other reasons you have mentioned, not in the increase of crops; in fact, the crops are short.

Q. Has there not been an extension of roads in Texas, having their main connections over your line?

A. Not to add much increase of business for the season of 1880; not much of a cotton crop came over the Iron Mountain railroad, and the express business goes hand in hand with the cotton to some extent, particularly the money part; the yellow fever threw business over the road in 1879.

Q. Well, there has been a large increase of railroad traffic over your road, hasn't there, during the last year?

A. Yes; growing out of the increased commercial prosperity, as you mentioned.

Q. Well, sir, the volume of express traffic responds in expansions and contractions to the general traffic over the road, does it not?

A. Yes; in my opinion it would.

Q. Is it customary for your railroad company to give guaranteed through bills of lading to all points beyond its line of railway to which you may have any character of freight whatever?

A. I so understand, but I can't speak from personal knowledge; the interchange of business between the different roads is something that is generally practiced all over the United States, unless they are diverse in interest.

Q. You make these through bills of lading, then, with certain railroads only, and not with all railroads, by which you guarantee safe delivery beyond the line of your road?

A. I so understand, yes, sir; most every road has some exceptions
where a part of their road only connects with a competitor.

1311 Q. Do you hold yourself out as guaranteeing safe delivery
beyond your lines in all cases, or only in certain cases?

A. I am not informod of the particulars of the bills of lading.

Re-examination by Mr. THOROUGHMAN:

Q. You were asked to explain, by Gen. Whitfield, in reference to the effect of the competition between railroads; I will get you to state if any amount of competition would affect the cost of transportation in any way; whether that affects the cost of transportation, or whether the cost is not just the same anyhow, whether you have much or little competition; the charges might be different, but the cost is the same, is it not?

A. Well, there would be an element that would come in there; if a company has no competition they would have a very large business, and they might, as the business increased, make the cost of doing it less; there are certain constant expenses, and the larger the volume of business, these constant expenses, being distributed over a larger amount, reduce the cost.

Q. But the fact of competition, only in the sense you have qualified it, would not affect the cost of transportation at all, would it?

A. Only as the volume of business.

Q. That indebtedness, as you find it in the report, assuming it to be thirty millions of dollars, how does that debt compare with the value of the property?

A. Well, the property is worth more than that; much in excess of it; more than thirty millions of dollars.

Q. How much.

A. The value of the property fluctuates with the earnings, and with the price of money, too; if the road should earn two and a half millions in a year that would be capitalized at six per cent., 1312 and would be some forty millions; in addition, there is a large property in lands of the company.

Q. Take affairs as they stand in this country to-day; how much in an estimate would you put the property above the debt, taking its land, right of way, property, and everything that it has got?

A. Well, I have not posted myself in regard to those matters to give you anything that would be of value to you; but not worth less than forty millions, I think.

Q. You state that the change from the road's doing its own express business and the Southern Express Company coming on you think was owing to the application, mainly of Mr. O'Brien, who represented that he had large ramifications in the Southern States, and it would advertise the railroad?

A. Yes, sir.

Q. Now, state if there was then any part of the Iron Mountain railroad, as it now exists, other than that part to Belmont?

A. No, sir; hardly dreamed of.

By Col. **Broadhead**: A good deal has been asked you of the responsibility and security for the payment of losses in the transportation of express matter one way and another; I will ask you what security has an engineer for the payment of his wages on a railroad; suppose it is encumbered with mortgages fully to the amount of its value?

A. My idea would be for him to go before a justice of the peace and get judgment against the company, and they would pay it.

Q. The payment of the engineer is a part of the running expenses of a road, is it not?

A. Yes, sir.

Q. A road cannot do business unless it pays its running expenses, can it?

A. No, sir.

Q. Well, is not that true in regard to the losses that occur 1313 in the transportation of goods; can a railroad company transact business at all if it don't pay its running expenses?

A. No, sir; they would lose confidence in it.

Q. They would lose business, would they not?
A. Yes, sir.
Q. Of course they would have to wind up unless the running expenses were paid?
A. Yes, sir.
Q. Don't you include losses in the transportation of goods among the running expenses of a railroad and the payment?
A. Yes, sir.
Q. And the payment of them is necessary in order to do business at all?
A. Yes, sir.
Q. Isn't that the security that every man has when he puts his goods for transportation on the line of a railroad, whether express matter or any other?
A. They would have the same tangible property to attach as the railroad company would have, and rather than defend themselves against that they would pay it, if it was a just claim.
Q. Independent of that, isn't there a business necessity which arises and makes it necessary to pay these running expenses in order to do business at all?
A. Yes, sir.
Q. The engineer who runs an engine does not look to the real property or to the car for the payment of his debt, does he?
A. He has that to fall back upon, and feels a double security.

(Sigature waived.)

(At this point an adjournment was had, by consent, until April 26, 1881.)

1314 ST. LOUIS, *April* 26, 1881.

Parties met pursuant to adjournment, and the further taking of testimony in this cause was resumed, as follows:

E. J. BUTLER, of lawful age, being produced, sworn, and examined as a witness on the part of the defendant, testified as follows:

Direct examination by Col. THOROUGHMAN:

Q. Where do you reside?
A. At Little Rock, Arkansas.
Q. What is your business?
A. I am agent for the Iron Mountain, Memphis & Little Rock, and the Little Rock, Mississippi River & Texas railway expresses.
Q. How long have you been engaged in that connection?
A. I have been agent for the Memphis & Little Rock and the Iron Mountain expresses since the first of June last.
Q. What were you doing before that?
A. I was agent of the Southern Express Company for nearly fifteen years; ever since their organization.
Q. You were agent of the Southern Express Company from its organization?
A. Yes, sir.

Q. What business were you engaged in before you were agent of the Southern Express Company?

A. I was agent of the Adams Express Company for some time; I was at Little Rock, I forget exactly how long; I went there on the first of March, 1865, for the Adams Express Company, and I was with them at Memphis and Vicksburg from June, 1863, down to March 1, 1865; at Natchez, Vicksburg, and Memphis.

Q. How long in all have you been connected with the express business?

1315 A. I was with the Adams Express; that is, agent for the Illinois Central, and for the Adams and American Expresses two or three years before that; about 1860 was my first connection with the express business.

Q. Have you been engaged in it since 1860?

A. All the time since about 1860.

Q. In what capacity have you been engaged?

A. As agent.

Q. All the time?

A. Yes, sir.

Q. At what points principally have you done your business?

A. At Sandoval, Illinois, first; then in the rear of Vicksburg, at Ord's headquarters, with the army; afterwards, five months at Natchez; afterwards, about seventeen months at Memphis; I was there, however, at Memphis, as clerk.

Q. Then after that where were you?

A. From that time as agent at Little Rock.

Q. What is your age?

A. Forty-six.

Q. And you have been engaged with the Iron Mountain express department since June last?

A. Yes, sir.

Q. And for the Southern Express Company at Little Rock down to your engagement with the Iron Mountain railroad?

A. Yes; with the Southern and Adams.

Q. You were with the Southern, if I understand you, from its organization to the time of entering the employ of the Iron Mountain Railroad Company?

A. Yes, sir.

Q. Are you familiar with the express business?

A. Yes, I think so; with most parts of it.

Q. What are the duties of your agency at Little Rock now; name the principal ones?

A. Receiving freight and forwarding it to different points; receiving from other points, and distributing at Little Rock.

1316 Q. Do you do any such thing as way-billing and giving bills of lading through?

A. Yes; I call that receiving and forwarding.

Q. Have you clerks?

A. Yes; I have two clerks.

Q. What sort of an express business has the Iron Mountain railway express department been doing since its organization; whether it has been doing a general express business; that is what I wish to know?

(Objected to, as incompetent.)

A. We have been doing precisely the same character of business that I have been doing for other express companies, a general express business. We have made collections the same as any other express company; collected notes and drafts; collected on the delivery of the goods for the goods, on shipper's invoice.

Q. Any C. O. D. packages?

A. That is C. O. D.; collecting on shipper's invoice; collecting on delivery; C. O. D.

Q. What sort of express matter have you carried generally?

A. We have carried almost everything that ever comes in the line of express business. We have carried heavy and light freights. Anything that was to be transported quickly.

Q. You mean you carried, as a class, all the articles, within that time, that is usually called express business?

A. Yes.

Q. And performed all the functions usually required of an express company?

A. Well, I don't suppose there is anything that an express company ever carried or did other than we have done.

Q. I will get you to state if you know anything about the schedule of charges to the public, made by the Southern Express Company before June last.

(Objected to, as irrelevant.)

1317 A. Yes, sir; I remember a great portion of the tariff; that is, to points we shipped and received from most frequently. I remember the former tariff of the Southern Express Company.

Q. You are familiar with the tariff now in use against the public, the one in force by the Iron Mountain railroad express department now, or the one in force before June last, by the Southern Express Company?

(Objected to, as incompetent.)

A. I have made some estimates in regard to the want of satisfaction, for the purpose of this inquiry, and for other purposes, and I find that the present tariff in use—you take the tariff classification on small packages—that the Iron Mountain express and railway express tariffs are about from twenty-five to thirty-three per cent. below the former tariffs of the Southern Express Company.

Q. From twenty-five to thirty-three per cent. less?

A. Yes, sir.

(Objected to, by plaintiff's counsel, as he is speaking of the contents of written papers.)

Q. You say you have made an estimate of the two tariffs?

A. Yes; I don't know that it may be entirely correct, but I figured on what you would call "the run of freight;" that is, taking the whole run of freight on the former tariff, and what would have been charged on that freight, and what we charge on that freight.

Q. And it is from twenty-five to what less?

A. Well, from a quarter to a third less.

1318 Q. I will get you to state if you are familiar with the estimate in which the public is holding, or does hold, the service rendered to them by the express department of the Iron Mountain railroad, if you can.

(Objected to, as before.)

Witness: I can give some illustrations that would probably answer the question.

Q. Do so.

A. I have been told by several consignees——

(Plaintiff's counsel objects; you can't prove habit by general impression or what several consignees have stated.)

Witness: Well, the firm of Bernays & Maxwell, of Little Rock, for one, they came to me repeatedly and asked how much less the tariff on such a package of freight to New York or Philadelphia, as the case might be, was; and I would tell them, and they would say, "we paid so much on that;" that is the present tariff of the other express company they had paid, it seems; and he told me the other day, he says: "We have charged them back with the difference several times, and they paid the difference." He says: "We want all our express to come by your line; we are getting it much cheaper and quicker than we ever have by the other."

(Objection renewed.)

Q. What I wish you to state in general terms is, if you can, whether the service rendered the public by the Iron Mountain railway express is generally satisfactory.

(Objected to, as before.)

A. It is generally satisfactory.

Q. I will get you to state, now, if there is any part of the express service that is called for at the hands of the express company by the public that the Iron Mountain Railway Company cannot do as safely and expeditiously and as securely as any express company in the country.

(Objected to, as leading and incompetent.)

1319 A. Well, sir, in my judgment, the work is done equally as well and as satisfactorily as it could be done by any express company.

Q. In the course of business, how is it with reference to giving bills of lading or way-bills for freight, for express freight? For instance, if a package was to start from Texarkana to New York, or from Little Rock to New York, do you give bills of lading for it clear through to New York?

A. We receipt it clear through to New York; we bill it clear through, and it goes clear through on the same way-bill.

Q. How would the Southern Express Company do it different from that to make it any more secure or expeditious?

A. Well, they could not do it any more expeditiously or safely than it is proved to be done.

Q. With reference to the prorating with other express companies, tell us the rule among express companies with reference to that; to illustrate my meaning, a package starts from St. Louis to New York, we will say; it is carried over one line of express—one express line from here to Cincinnati; another to Pittsburg, and then a third from thence to New York. Do they prorate through? Tell us the means by which these companies carry these packages, if you know.

A. I have never audited the accounts, and from personal knowledge I can't answer the question, only from general understanding.

(Objected to.)

Q. If you don't know the fact you need not state it; but if you know the mode of doing business by which you got a knowledge you may state it.

A. Well, I have adjusted damages—not damages, but overcharges—on a through rate, by charging back the prorate; for instance, a package would be coming from New York to Little Rock; the
through rate might be \$3.00 to St. Louis, and it might be
1320 \$1.75, making \$4.75 for the through rate; and the over-
charge would be charged back by our rebating $\frac{175}{475}$ of the overcharge, and charging $\frac{300}{475}$ back beyond here to other lines, leaving them to prorate the amount east from here.

Q. Now, is the rate the same which you derive—the same amount of pay for any given package, where it goes from one end of the line you operate to another, or where it goes clear over your line, and one other—do you get the same proportion for the carriage of the package?

A. I would presume not.

(Objected to.)

Q. If you do not know you need not state; you say you presume not; of course if you do not know you need not answer.

A. The through rate is always made from the different lines by taking the lowest rate by one line and prorating either by distance carried or by the amount of local charge over each line.

Q. So that the company carrying it on its own line and consigning it to the consignee would get more, if I understand, than you would if it went beyond its own line; its local rate would be higher than where it was a through rate?

A. Yes; I think that is invariably the case, unless there are exceptions where there are errors made.

Q. I am talking about the general rule, of course; errors would not affect the general rule.

A. Yes; the proportion of the through rate is less than the local rate.

Q. Now, suppose a package starts from St. Louis and is consigned by the consignor to Texarkana, it then would go alone over the Iron Mountain express department, would it not?

A. Yes, sir.

1321 Q. Now, how could it affect your charges, even though the consignor might want it to go to Galveston, if he had it consigned to himself or agent at Texarkana; would you take that into account at all, where your functions ceased at Texarkana?

A. I was referring to parcels in speaking of the lesser weight. Not if it weighed 100 pounds; the through rate from Texarkana, or from Little Rock to New York, is made up of the two local rates, and 100 pounds, we would get just as much on the hundred pounds, in answering your question, from St. Louis to Texarkana, as the two local rates, I presume; I don't know that, but it would be so from Little Rock; take from Little Rock to some other point, I can answer.

(Plaintiff's counsel objects to the answer.)

Q. You are connected with the express department of the Memphis & Little Rock railroad, are you not?

A. Yes, sir.

Q. I will get you to state whether you know anything about the Iron Mountain Railway Company, at the junction of these two lines, at any time since last June, refusing to wait a reasonable time or refusing to carry freight for the Southern Express Company, coming from the Little Rock & Memphis railroad line.

A. No, sir; we never refused, and never gave them less accommodation than they have us.

Q. Never less accommodation than you have taken to yourself?

A. Yes, sir.

Q. I will get you to state if you remember a case in September last where there was one solitary day out of the whole time that the Southern Express Company did not get its freight on the train; that is, where the Memphis and Little Rock railroad did not get in in time to meet the time-table of the Iron Mountain railroad—that they did not get their freight on the Iron Mountain railroad line; do you remember a case of that sort?

1322 A. There were two days during last fall the train made connection that they did not get their freight off, going South.

Q. For what reason was it that they did not get their freight off?

A. Well, I made very diligent inquiry of the men——

(Objected to.)

Q. You need not state what they said, but state the reason, if you know.

(Plaintiff's counsel objects to the statement of the witness.)

WITNESS: I think I am competent to say that it was for no other reason than that the Southern Express men were dilatory and slow about making the transfer.

Q. Has that happened more than the two days you have mentioned in the whole history of the express business, since last June?

A. I never heard of their not getting their freight off except the two times, except when the trains missed connection.

Q. And on inquiry you learned it was their own dilatoriness that prevented their getting on the train on these occasions?

A. Yes, sir.

Q. Do you know Mr. Agee?

A. Yes, sir; very well.

Q. Was he there about the time of these two interruptions that you speak of?

A. He was there the day we got the freight away.

By Judge BRECKINRIDGE: This delayed freight, you mean?

A. Yes, sir.

Q. That was the next day after?

A. It was on Sunday. I went down to the depot and got a special car on Sunday, weighed and checked their freight, and had a car placed at the platform for them to load it.

1323 Q. You had it weighed and checked up, and a car placed for them to load it?

A. Yes, sir.

Q. Now, whose duty was it to load that freight, to make this transfer to the car of the Iron Mountain railroad; was it the Southern Express Company's duty or the Iron Mountain Express?

A. It has always been their custom to do it; they would not allow us to handle it.

Q. Did you weigh and check up their freight, and put it on a car at the platform?

A. Yes, sir; and assisted them in getting it off. The second time the freight was delayed it was entirely unexpected. I hadn't supposed they would allow their freight to get left twice. It was left twice, however; and the next day I telegraphed down from the city office to the depot office and ask- Mr. Buchanan if he would give us a car for the Southern Express Company to load their delayed freight. He answered that he would after the train passed north that day; that he would have a car switched out. I went down myself and, as I say, weighed and checked over the freight, to get the weights and account of it; and the car was placed on the side track, and they loaded their freight, and it went down that night.

Q. What length of time was that delay of their freight?

A. Well, they got off a part of it each night, but there was some freight delayed forty-eight hours.

Q. But you say the cause was their tardiness in loading?

A. Yes, sir.

Q. The Iron Mountain Railway Company runs its trains on a time-table, does it?

A. It does.

A. Yes; the proportion of the through rate is less than the local rate.

Q. Now, suppose a package starts from St. Louis and is consigned by the consignor to Texarkana, it then would go alone over the Iron Mountain express department, would it not?

A. Yes, sir.

Q. Now, how could it affect your charges, even though the
1321 consignor might want it to go to Galveston, if he had it con-
signed to himself or agent at Texarkana; would you take
that into account at all, where your functions ceased at Texarkana?

A. I was referring to parcels in speaking of the lesser weight. Not if it weighed 100 pounds; the through rate from Texarkana, or from Little Rock to New York, is made up of the two local rates, and 100 pounds, we would get just as much on the hundred pounds, in answering your question, from St. Louis to Texarkana, as the two local rates, I presume; I don't know that, but it would be so from Little Rock; take from Little Rock to some other point, I can answer.

(Plaintiff's counsel objects to the answer.)

Q. You are connected with the express department of the Memphis & Little Rock railroad, are you not?

A. Yes, sir.

Q. I will get you to state whether you know anything about the Iron Mountain Railway Company, at the junction of these two lines, at any time since last June, refusing to wait a reasonable time or refusing to carry freight for the Southern Express Company, coming from the Little Rock & Memphis railroad line.

A. No, sir; we never refused, and never gave them less accommodation than they have us.

Q. Never less accommodation than you have taken to yourself?

A. Yes, sir.

Q. I will get you to state if you remember a case in September last where there was one solitary day out of the whole time that the Southern Express Company did not get its freight on the train; that is, where the Memphis and Little Rock railroad did not get in in time to meet the time-table of the Iron Mountain railroad—that they did not get their freight on the Iron Mountain railroad line;
do you remember a case of that sort?

1322 A. There were two days during last fall the train made
connection that they did not get their freight off, going
South.

Q. For what reason was it that they did not get their freight off?

A. Well, I made very diligent inquiry of the men——

(Objected to.)

Q. You need not state what they said, but state the reason, if you know.

(Plaintiff's counsel objects to the statement of the witness.)

WITNESS: I think I am competent to say that it was for no other reason than that the Southern Express men were dilatory and slow about making the transfer.

Q. Has that happened more than the two days you have mentioned in the whole history of the express business, since last June?

A. I never heard of their not getting their freight off except the two times, except when the trains missed connection.

Q. And on inquiry you learned it was their own dilatoriness that prevented their getting on the train on these occasions?

A. Yes, sir.

Q. Do you know Mr. Agee?

A. Yes, sir; very well.

Q. Was he there about the time of these two interruptions that you speak of?

A. He was there the day we got the freight away.

By Judge BRECKINRIDGE: This delayed freight, you mean?

A. Yes, sir.

Q. That was the next day after?

A. It was on Sunday. I went down to the depot and got a special car on Sunday, weighed and checked their freight, and had a car placed at the platform for them to load it.

1323 Q. You had it weighed and checked up, and a car placed for them to load it?

A. Yes, sir.

Q. Now, whose duty was it to load that freight, to make this transfer to the car of the Iron Mountain railroad; was it the Southern Express Company's duty or the Iron Mountain Express?

A. It has always been their custom to do it; they would not allow us to handle it.

Q. Did you weigh and check up their freight, and put it on a car at the platform?

A. Yes, sir; and assisted them in getting it off. The second time the freight was delayed it was entirely unexpected. I hadn't supposed they would allow their freight to get left twice. It was left twice, however; and the next day I telegraphed down from the city office to the depot office and ask- Mr. Buchanan if he would give us a car for the Southern Express Company to load their delayed freight. He answered that he would after the train passed north that day; that he would have a car switched out. I went down myself and, as I say, weighed and checked over the freight, to get the weights and account of it; and the car was placed on the side track, and they loaded their freight, and it went down that night.

Q. What length of time was that delay of their freight?

A. Well, they got off a part of it each night, but there was some freight delayed forty-eight hours.

Q. But you say the cause was their tardiness in loading?

A. Yes, sir.

Q. The Iron Mountain Railway Company runs its trains on a time-table, does it?

A. It does.

Q. Did the train start out on its time?

A. It did not start ahead of time.

1324 Q. Wasn't it rather behind time on both occasions that it started, giving them a good opportunity to get their freight into the car?

A. I can't say in regard to that, whether it was just on time or a little behind time; it was probably a little late.

Q. What was there that you could have done, that you did not do, to make ready to get their freight off on that train; whether anything more could have been done, that was not done?

A. No, sir; nothing.

Q. You did everything you could do to get their freight off on that train?

A. Always; and it was always my instructions to aid them in every way to make a quick transfer, and have nothing left, if possible.

Q. Your business keeps you at Little Rock?

A. Yes, sir.

Q. You know all about this transfer from that road to the Iron Mountain road?

A. Everything; I see to it personally, and make myself acquainted with it in the morning, everything that occurs at night; I am not always at the depot.

Q. And any interruption of business or transfer, you would know it, would you not?

A. I would, sir.

Q. Have you ever heard of any but those two occasions occurring last fall?

(Objected to.)

A. The only two I ever heard of.

Q. You have heard of no complaint except on these two occasions?

A. No, sir.

Q. Now, what sort of facilities have been extended to the Southern Express Company to transact their business in the territory you are familiar with along the road?

A. Equally as good, as far as I know, as we have had ourselves.

1325 Q. Has there been any difference at all, in anything that you know of?

A. Nothing at all that I know of.

Q. I will get you to state if you are acquainted with the station-house at Texarkana.

A. No, sir; I am not.

Q. Are you acquainted with the station-house at Little Rock?

A. Yes, sir.

Q. Now, in regard to the use you are making of that for your own express business; have you any more room there than you needed yourself, to do your own business?

A. No, sir; we have not—not in the express department; there is no room to spare there.

Q. I will get you to state how it is in reference to the agent acting for the Southern Express Company, and at the same time acting for the Iron Mountain Railroad Company, not only in the capacity of agent for its express department, but for all its freight business; in other words, is there any inconsistency in an agent acting for the Iron Mountain express department, and as general agent for the road at the same time?

A. I should think not, sir.

Q. Would it not, on the contrary, be entirely consistent for him to do those two things?

A. Yes; at almost all points.

Q. Would it not be inconsistent both as to time and duty, for the agent on the Iron Mountain railroad to act as agent for the Southern Express Company also, in the express business; could one man well do business for both companies?

A. Well, I would not like to try to work for the two companies.

Q. Well, could he do it; could he serve two companies; would one man, for instance, at Little Rock—could one man do the duties of both companies?

1326 A. No, sir; oh, no; at no such place as Little Rock.

Judge BRECKINRIDGE: What do you mean by both companies?

Q. The Southern Express Company and the Iron Mountain railroad; he could not do it.

A. No, sir; not with justice.

Judge BRECKINRIDGE; You do not speak in general——

Mr. THOROUGHMAN to the witness: What were you going to say?

WITNESS: I was going to say, in regard to smaller points, I would think that it would conflict with the interests of the railroad company and the Southern Express Company; either an agent would send matter by express which would deprive the freight department of earnings and would send matter by freight that would deprive the express department of their legitimate earnings; they would divert freight that should go one way or the other, if they were agents of the Iron Mountain, and Southern Express Company, also; it would be too much like a man serving two masters.

Q. Couldn't an agent divert the business to the great detriment of a railroad away from it, if he was the agent of the Southern Express Company at the same time he was agent of the road at any point; couldn't he do that?

A. Well, he could do it.

Q. I don't mean that he could divert it away from the road, but into a department that would deprive the railroad of money?

A. Yes, sir; that could be done.

Q. I will get you to state if you have wagons and horses at Little Rock?

A. Yes, sir.

Q. They belong to whom?

A. The Iron Mountain express department.

1327 Q. What do you use these horse for—and wagons.

A. For gathering up and delivering the freight, gathering up and carrying freight to the depot; receiving it at the depot, taking it to the office and delivering about town.

Q. Distributing it again?

A. Yes, sir.

Q. Do you know anything about such service as that performed with the wagons and horses and carts?

A. Yes, sir.

Q. It has been very carelessly and inappropriately called accessorial service, I believe, by some; do you recognize it by that name?

A. I never had heard it called by that name until the suit arose between the express and railroad.

Q. You are familiar with that business, are you not—gathering up freight, and when it is received, distributing it to consignees?

A. Yes, sir.

Q. Did you ever have any such duties as that at Memphis, when you were there, or at Vicksburg?

A. No, sir; I was in the office.

Q. I mean was it done by the company?

A. Oh, certainly; at Memphis and Little Rock also.

Q. At Memphis and Little Rock, that was done by the Southern Express Company while you were with them?

A. Yes, sir.

Q. Now, suppose A told you that he wanted you——

Judge Breckinridge: Do you mean to say this was done while you were at Memphis—goods delivered and taken up there?

Witness: Yes, sir.

Q. Suppose, at Little Rock, A wants you to send to his house to get a package, and you do it; and B goes and brings his
1328 package, and both of them consigned to St. Louis; what allowance, if any, do you make to B for bringing his package?

A. None whatever.

Q. Why not make him an allowance?

A. Well, my idea of the tariff is, that is charging from one depot to another, as far as that goes; we would charge the same if brought to the train, or if loaded on the train. Fruit men frequently bring their fruit to the depot instead of to the office, or instead of having us call for it. I have known the Southern Express Company to carry as men as six or seven thousand pounds; gather it up about town from the different shipping houses in the day, and carry it to the depot, and had other parties bring their fruit to the depot, and we charged them the same; no difference in the charge.

Q. Then you understand the carriage of express matter to be on the line of the road?

A. That is what is charged for.

Q. Now, have you, in your twenty years' experience, ever heard any charge made at all for thus gathering up and again distributing packages that are sent by express?

A. No, sir; never heard of anything of the kind.

Q. Now, tell us why you do this; I mean, why is this accessorial service performed; who is convenienced by it, and who is the gainer by performing it; I mean, why is it performed without charge?

A. In the first place it increases the business of the express department; it makes business that might not otherwise go; in delivering freight it is a convenience to deliver it on the day of arrival, and get rid of it, and get the money on it instead of storing it in the house; a good deal of our freight is delivered without going in the office at all; and heavy freight all remains in the wagons after taking it from the depot; and instead of taking it to the office it is deposited at the consignee's place of business; it is much more convenient to do business in that way.

1329 Q. Isn't it much less expense also; much less expense to do business in that way than to have a warehouse and store all this property, and to require parties to go there and get it?

Counsel for the plaintiff objects to the form of the question.)

A. I don't know that there would be much difference in the expense, except in writing receipts; well, yes, it would; if it were all to come to the office, and be notified or entered up in the old "horse-book," as we call it, it would requre more clerk hire.

Q. Wouldn't it require much more house-room, also?

A. Yes; it would require more house-room.

Q. You say, then, the reason it is done for nothing is because it is convenient to the person who does it, it is less expensive, and because it is the means of building up the express business?

(Objected to, as putting the answer in the mouth of the witness.)

A. Well, it has always been customary, ever since I have been in the express business, at any point where there was sufficient population to make it an object to deliver freight, for them to deliver; and I suppose, of course, it was less expense to deliver it at the office than it would be the way it would be done.

Q. In this accommodation of the public by sending out your wagons you also have a limit beyond which you do not go with wagons?

A. Yes, sir; usually make a limit.

Q. Anywhere inside of that you go for nothing?

A. Yes, sir.

Q. What is the universality of that custom, as far as you know, if you know anything about it; how far is it universally the rule of going and performing that service, in a given circuit for nothing?

A. Well, so far as the legal requirements, or anything of that kind are concerned——

1330 Q. I am not asking you about that; but what is the custom of express companies performing that service, as a matter of convenience to itself, and to build up its business; is it universally not charged for, or is it sometimes charged for?

A. It is never charged for, as far as I know; I have had parties who lived outside the city limits, or so far away that I would think my driver would not have time to go there, and they would come and offer me money to carry freight out to their place, and I would say, "No; I cannot do it; if I would do it at all I would charge you nothing for it;" that has occurred a great many times.

Q. What I wish to prove by you is this: That this accessorial service, from time immemorial, from the very foundation of the express business in this country, has been doing for nothing; if you know that fact you may state it.

A. I never heard of there being any charge for it.

Q. And your experience has been how; that it was charged for or not?

A. That it has not been charged for; I never knew of it making any difference.

Q. You say parties bring freight to you; in what quantities there at Little Rock?

A. Well, in wagon loads.

Q. To be shipped where?

A. To St. Louis; sometimes to Chicago.

Q. That, you say, is brought and delivered to your express at the car?

A. Very frequently.

Q. And no allowance is made for the service of bringing it there at all?

A. None at all.

Q. You have stated, I think, and if not, I will get you to do so, that you have been with the express department of this road about since its organization?

A. Yes, sir.

1331 Q. Do you know what other railroads in the United States are doing their own express business?

A. I presume I know most of them; commencing with our own and the Iron Mountain, the Memphis & Little Rock, the Little Rock & Fort Smith railway, the Little Rock & Mississippi River & Texas railway, the St. Louis & Texas railway, the Ohio & Mississippi railway, the Marietta & Cincinnati, the Baltimore & Ohio, the Pennsylvania & Reading, the Delaware & Lackawanna & Western.

Q. The Richmond & Chicago—do you know anything about that?

A. No.

Q. Do you know anything about the Union Pacific?

A. No; I don't know anything about that; I simply name those I know of my own knowledge.

Q. You say you are familiar with the fact that the Little Rock & Fort Smith Railway Company runs an express department?

A. Yes, sir.

Q. Do you connect with them?

A. Yes, sir.

Q. At what point?

A. Little Rock; and we deliver them freight at Fort Smith, crossing the other side of the river, or alongside of the river at Baring Cross.

Q. Do you receive and transfer from their line to your line?

A. Yes, sir.

Q. Now, what difference do you make with them in regard to this accessorial service, and any member of the public that brings to you or sends to you to get that freight?

A. None whatever; we charge the same as if we had sent out and got the freight in town.

Q. You charge them just the same rate at your depot; how near together do your tracks run there?

A. The tracks cross at the Fort Smith crossing.

1332 Q. At the Fort Smith crossing at the north end of the bridge; then there has never, in your experience, been an instance in which any charge has been made for this accessorial service?

A. I never knew of any charge being made.

Q. In the case of the Fort Smith & Little Rock railroad you receive their express freight from their car to your car, don't you?

A. We receive freight at your office; they bring it in wagons to us, except in the matter of fruit and heavy articles; those are transferred at the crossing; most of the heavy freights are transferred at the crossing.

Q. Now, I will get you to state if in your experience you can give a single case wherein an allowance has been made by any express company for this service performed by a consignor of goods called accessorial service.

A. No, sir; I have never known of any being allowed; never even heard of any being allowed.

Q. I will get you to state if in your experience you have met with a case of this sort where express freight will be sent in a car without being immediately in charge of a messenger without any messenger being in the car with it, in the baggage car, for instance, or an extra car.

(Objected to, as incompetent and irrelevant.)

A. Yes, sir; I have, as agent of the Southern Express Company, loaded freight, where we had more than would go into the regular car at Little Rock, loaded freight in an extra car and sent it to Texarkana; had it loaded in and locked up, and telegraphed the agent at Texarkana that he would find so many packages.

Q. Now, in a case of that sort, where no agent would be along, is any deduction made to the shipper for that class of freight?

A. Well, those are the only instances.

1333 Q. But did you make a deduction to the shipper because you didn't have the messenger along?

A. No, sir; no deduction.

Q. You charged the same rate as if it had been a car in charge of a messenger?

A. Yes, sir.

By Judge **Breckinridge**: You mean no messenger on the train at all?

A. No messenger on the train at all.

By Mr. **Thoroughman**: There was no rebate made to the shipper because there was no express agent along; you charged just the same?

A. Charged them just the same; no rebate; in fact, a great portion of the freight was through freight.

Q. And no less charge made?

A. No less charge made, and since the Little Rock & Mississippi River & Texas railroad has been running I am sending down frequently shipments by the afternoon train—the mixed train on which they have no messenger—and on the sacks shipped to Pine Bluff charge the same rates, of course, as if in charge of a messenger—the same thing precisely.

Q. Mr. Butler, you are familiar with the volume of business done over your line—I mean express business over the line of the Iron Mountain railroad—are you not?

A. Somewhat; yes, sir.

Q. The bulk of it goes to and beyond Little Rock, does it not, of express matter?

A. Yes, sir; the bulk of it; the heaviest part of it goes over the Southern Division, I would judge.

Q. What do you mean by the Southern Division?

A. Little Rock to Texarkana; they get quite a large quantity of freight from the East, off the Memphis & Little Rock road; I suppose there is about as much goes on there as comes off at Little Rock; making the bulk perhaps about the same.

1334 Q. I wish to ask this question, and that is the object of all these preceding questions: Whether the Iron Mountain Railroad Company has the facility and capacity to do the entire express business that is done over the line of that road?

A. Well, I think that they would do it as well by doing the whole as a part of it.

Q. Couldn't they do it better if they had the whole than a part?

(Counsel for the complainant objected to the form of the question.)

A. I don't know that they would do it better, but I judge they could do it just as well; equally as well.

Q. What I mean by doing it better is this: Suppose that you had all the time to devote to your business that your office requires at your hands without dividing it with the Southern Express; couldn't you do it all easier than you now do a part of it?

(Objected to, as leading and incompetent.)

A. I would prefer to do it all at the office instead of receiving from them at the depot. I would prefer to do it all our own way; do it all as one kind of business.

Q. Now, tell us what, in the way of labor and money, is saved to the Iron Mountain Railroad Company by the service that is being performed by the Southern Express Company.

A. At Little Rock?

Q. Anywhere.

(Complainant's counsel objected to the question, both as to form and substance.)

A. I could perform the whole service without any more expense, or the employment of any more men, just as well as it is done now.

Q. So, then, the result of it is that the work done by the Southern Express Company is what?

A. It is of no advantage to the railroad company that I can see.

1335 Q. Is it any advantage to the public?

A. I would not suppose it were. I wouldn't think it were any at all; I don't see how it could be. There was one matter of inquiry that I would like, perhaps, to make a little plainer in the matter of through rates. Now, sometimes they are made up by putting the local rates together, and at other times by taking the lowest through rate, where they are competing lines; taking the lowest through rate where there are no competing lines, and sometimes adding the two tariffs together; that is, as far as my knowledge of rates goes.

Q. You mean taking the lowest rate as a basis of calculation?

A. Yes, sir.

Q. And then prorating over your road according to the distance?

A. Well, that is only from my knowledge of the custom. I am not acquainted with the manner of settlement only as I have stated.

Q. I will ask you to state what property the Southern Express has in the States of Missouri and Arkansas that you know of.

A. I know nothing about Missouri.

Q. Well, what have they in the way of property in the State of Arkansas, that you know of?

(Objected to, as incompetent and irrelevant.)

Q. They have two horses, if they have not sold any since I was agent for them. They have two sets of double harness, one set of single harness, a double and single wagon, and an old single wagon that was discarded from use when I was there.

Q. Now, state what other property they have, if any.

A. They have, in the Little Rock office, a safe that cost $75 about twelve years ago. They have two counters that cost $425. They have a safe at the depot—I think they have an old safe at the depot—that I purchased for them several years ago, that is not in
1336 use; I believe I paid $100 for it. It was a second-hand safe when I bought it, and they have some desks.

A. Well, not to itemize it, can you give us the gross estimate of its value; can you fix the value that you would state it was not worth beyond a given sum?

A. I think I have made up the list a great many times to return for taxes, and probably put a low estimate on it for that purpose.

Q. About what was that?

A. I think I have estimated it, about the last time I estimated it to return for taxes, at $1,200 to $1,300.

Q. That was all the property they had in the State of Arkansas?

A. Well, nearly all; they have a few safes at other points; probably six small safes.

Q. Worth how much?

A. I understood at the time they cost $50 apiece, or $55; at Texarkana I don't know what they have; I think they have a horse and wagon at Hot Springs.

Q. What were your connections with the Southern Express Company?

A. I was agent at Little Rock.

Q. Would you know by your relation with them, then, if they had any land, real estate, town property, or anything of that sort, in the State of Arkansas; was your relation to them such as would have led you to know anything about that?

(Objected to, the same as before.)

A. I would; I would know if they did have any.

Q. In your statement you have given all the property that they owned, that you know anything about?

A. Yes, sir; that is all that I know of.

Cross-examination by Judge **Breckinridge**:

Q. I think you stated you were in the employ of the Southern Express Company for some fifteen years?

A. Nearly that time, I believe.

1337 Q. To the 2d of last June?

A. Yes, sir.

Q. When you quit their service and went into the service of the Iron Mountain railroad express department?

A. Yes, sir; I accepted the agency of the Iron Mountain on the night of the first, I think; I telegraphed my resignation to St. Louis, and telegraphed my acceptance to St. Louis of the other; of course I could not close out that day, nor did I; I suppose they did not relieve me at the Southern until about the fifth; I think the clerk, however, attended to the duties of the Iron Mountain office, and I remained there probably to about the fifth.

Q. The first knowledge that the Southern had of your having left their service was your telegram, wasn't it?

A. Yes, sir; the same time; well, I don't know whether on the last day of the month or the first day of the month.

Q. But that was the first knowledge the Southern had that you had left their service?

A. Yes, sir.

Q. You had, up to that time, avowed you would not, had you not?

A. No, sir; I had stated that I didn't see how I could consistently, until I should learn whether I thought the Iron Mountain express would be a permanent institution; I had talked with the assistant division superintendent of the Southern Express Company, and also with the general superintendent, Mr. O'Brien, in regard to it; some time, at different times, with Mr. Fisher, division superintendent, and Mr. O'Brien, the general superintendent.

Q. Had you not given them to understand that you would remain with the Southern Express Company after the establishment of the Iron Mountain express department?

A. They never asked me the question.

1338 Q. I did not ask that.

A. I don't know what they understood.

Q. Didn't you intend that they should understand from what you said to them and to all others connected with the Southern Express Company in controlling positions that you intended to remain with them?

A. I intended that they should understand that I should do just as I thought best about it, and I did ask their judgment in regard to it; I asked Mr. O'Brien's judgment, and he said he didn't feel competent to advise me; that he thought my judgment as good as his in regard to the matter; but he says, we intend to remain on the road if we can; I told him that if I thought the Southern Express Company would not remain permanently at Little Rock, that I wanted to go with the Iron Mountain; that they had offered me a position, and, that if I concluded that they would remain at Little Rock, that I had no doubt they would retain me as their agent, but if I made up my mind they would not stay, and the Iron Mountain would; I wished him to understand that I would go with the Iron Mountain in place of remaining with the Southern.

Q. Then when you left the Southern you went to the Iron Mountain, and you left simply on the calculation of what would be to your own interest in view of the probable permanence of the one and the danger that the other might not be permanent?

A. Yes.

Q. You didn't leave the service of the Southern because they had been dealing unfairly with the public?

A. No, sir.

Q. Or charging too much for their service?

A. No, sir; nothing of the kind.

Q. Not because they hadn't property enough in Arkansas to do their business properly?

A. No question of that, I reckon.

1339 Q. Not because you had come to the conclusion that they were not solvent?

A. No, sir.

Q. Not because they had failed to carry out all their contracts?

A. They never failed to carry out their contracts with me.

Q. And not because, in your judgment, they were not able to carry out their contracts with every one?

A. No, sir.

Q. You had no reason to doubt the solvency of the Southern Express Company?

A. Not at all; I have seen and known of their anteing up to pay big damages.

Q. You had every reason to believe them safe and solvent?

A. I never had any reason to doubt it.

Q. Competent and reliable?

A. Oh, yes; no trouble about that—about their competency.

Q. The statement, then, that you have made in regard to the amount of property which the Southern Express Company had in

Arkansas is not to be understood as expressing your opinion that they had not enough to do their business with properly?

A. Oh, no, sir.

Q. You think it was sufficient, do you not?

A. Well, with perhaps a few exceptions; now there are some stations that I might think they would need a safe, where they would not think they would need a safe.

Q. But in all matters, except where there might be a difference of opinion as to the accommodation required, they had all that was needed; were they not well equipped for doing the business they proposed to do as express companies are as a rule?

A. Well, that might be a question I would not be prepared to answer.

1340 Q. Your knowledge of such equipment would not enable you to answer?

A. No; I have not examined.

Q. In fact, your knowledge of express matters is mainly confined, for the last fifteen years, or exclusively confined, to Arkansas and Missouri?

A. Arkansas, principally.

Q. You therefore cannot make comparisons out of Arkansas?

A. Well, I have been over other express companies up through Iowa, Missouri, Illinois, and in passing over them I saw very little difference in regard to equipment, as far as that is concerned.

Q. As to the difference in equipment in prime cost and value between the Southern Express Company, as you have described it as far as your knowledge went, and that which the Iron Mountain express department has, is it any more than the Southern Express Company have?

A. We have more in value at Little Rock than the Southern Express Company, I think.

Q. That is, that the items cost more relatively.

A. Yes, sir; our safe up town probably cost four times as much as their safe.

Q. It is a new safe, just bought, is it not?

A. Well, it has a burglar-proof box inside of it and combination lock.

Q. In general, however, the equipment of the Iron Mountain is about the same as that of the Southern Express Company?

A. Oh, no; superior to the Southern Express Company.

Q. Superior in the ability thus given to do a business, or superior in its prime cost and recent improvements, possibly in safes and locks?

A. Well, I don't suppose that while I was agent of the Southern Express Company that there was ever any danger from any one breaking into the safe there; we always had a man sleep
1341 with the safe; he slept in the house, and yet we did not feel compelled to have any, from their safe being one that could not be entered.

Q. Then the difference in that respect was, the Southern Express Company employed a watchman for its safe, and the Iron Mountain

Railroad Company, having a more secure safe, does not employ a watchman?

A. No, sir; never employed a watchman, but had a clerk sleep there.

Q. The clerk slept there and added to the security of the place; is that so?

A. I suppose, probably, the office was more secure by a man sleeping there at that time, but not any more secure than the office of the Iron Mountain Company is at the present time.

Q. Then, if I understand, for all substantial purposes, the Southern Express Company's equipment was as sufficient for all the purposes for which it was designed as the Iron Mountain Express, though there may have been some difference in prime cost?

A. I didn't see, while I was agent for them, any great reason to have more, or I should have asked it.

Q. Whatever you asked and recommended they did, did they not?

A. Usually.

Q. The matter was conducted under your general supervision?

A. As far as the Little Rock office was concerned.

Q. And therefore its equipment was what you thought necessary?

A. Yes, sir.

Q. Now, you don't know anything about provisions they had made in Texarkana in the way of property, I understand you to say?

A. Not to my own knowledge; only hearsay.

Q. Nor at Hot Springs?

A. Well, yes.

Q. I understand you to say you cannot speak of Hot Springs?
1342 A. Since then, I remember I sent the horse over there; sent a horse tha t they had.

Q. They had also a wagon there?

A. They afterwards got a wagon there which I saw the picture of; I don't think I have ever seen the wagon.

Q. A safe?

A. I presume they have.

Q. You don't know, however?

A. No, sir.

Q. Please tell me as to which of these stations I shall read to you; you are informed in regard to the property the company has or may have at those stations: Fulton, Hope——

A. You mean the Southern Express Company?

Q. Yes, sir; Arkadelphia, Gurdon, Malvern, Benton, Cabot, Kensett, Austin, Beebe, Judsonia, Bradford, Newport, Walnut Ridge, Corning, Brinkley, Forrest City, Duvall's Bluff, and Lone Oak.

A. I think they have four safes in the State at those points outside of Little Rock, Hot Springs, and Texarkana; I think four small safes.

Q. Do you know of that really, or are you speaking from general impression?

A. The safes came to my office and I sent them out when they came.

Q. You had no control or supervision of those offices?

A. No, sir.

Q. You don't know what changes might have occurred since you left the service of the company?

A. Well, I would suppose I would be advised.

Q. I mean since you left the service of the company last June?

A. From the fact that everything that is carried by them is entered also on our bills, and I look them over daily.

Q. You saw everything, did you?

1343 A. Nearly everything; I didn't see everything; I can't see what is going on there to-day, for instance; I can't swear positive; I don't suppose it makes any particular difference; I suppose this that wherever——

Q. But you are just guessing.

A. I am not guessing.

Col. **Broadhead**: I object to this evidence.

Q. I ask whether you are able to speak of the equipment and property of the company at those places that I have just named?

A. Well, to speak positively in regard to the matter, I can't tell you what there is at any place, except Little Rock.

Q. You want to be understood your answer is to be limited to Little Rock?

A. Yes, sir.

Q. And any improvement which you may suppose exists in the methods of doing business under your guidance by the express department of the Iron Mountain railroad at Little Rock is the result of the long training you had with the Southern Express Company, is it not, chiefly, and of the ripe experience you thereby got?

A. Well, a person gets experience every day; I have got considerable experience since I left the Southern, and I expect to go on getting experience as long as I live.

Q. But you got a good deal with them?

A. I got experience with the American and the Adams before them.

Q. And during your long *a* connection of fifteen years with the Southern Express Company you got the bulk of your experience and training, did you not?

A. Well, my general knowledge of the express business, what general knowledge I had, was got before the organization of the Southern Express Company; of course as every man gets a little experience every day, but my business at Little Rock with the Southern Express Company was rather a routine business, the same thing one year around with another.

Q. How is it now?

1344 A. Very much the same as far as Little Rock is concerned; I have had occason, however, to inquire further, and I am now also general agent for the Little Rock, Mississippi & Texas, and organized the express business on that road, and have made a tariff and made a classification; of course a man acting as I was before experiences or learns even in daily routine, something frequently coming up that he would treasure up and add to his knowledge in any business.

Q. You mean by that you continue to learn; you learned while with the Southern during fifteen years, and you have learned since you left last June?

A. Somewhat; yes, sir.

Q. How long have you been manager of the express department of this road?

A. Only a short time; the road has only been completed for two months.

Q. How long have you been manager of the express department of this road?

A. Less than two months.

Q. How much less?

A. I can't tell the time exactly; I suppose it was about a month and a half ago I commenced to get up the stationery and tariff.

Q. When did you actually take charge of the running?

A. I published the tariff to take effect on the 22d of last month.

Q. Now, the Southern Express Company didn't operate the express over that road prior?

A. No, sir; they were not; they tried very hard to get to operate an express on the road.

Q. You say they tried very hard to get on that road?

A. I understand so.

Q. Who hindered them?

A. The officials of the railway concluded they would make more money to run their own express.

1345 Q. Had you anything to do with producing that result?

A. I may have had.

Q. You tried to, did you not?

A. Well, I answered the questions in regard to it very cheerfully, according to the best of my knowledge.

Q. You spoke in your examination-in-chief, Mr. Butler, about instances in your service for the Southern Express Company, if I remember, in which you sent off cars loaded with express matter, and not in charge of a messenger; do I understand you to say that that was your regular habit, or that it was only in special cases where there was an emergency?

A. That was only an exception.

Q. And happened very rarely?

A. In the winter time, when we had a great deal of freight to go, it happened very frequently—one winter.

Q. But as a rule, and in connection with the general express business, it was an incident only, resulting from an overcrowding of freight?

A. That was all.

Q. And not done except to meet such an emergency?

A. That was all.

Q. I understood you to say, in your examination-in-chief, that the Iron Mountain railroad express department, within the range of your knowledge of it, could just as conveniently, perhaps for itself more conveniently, carry all the express matter, including that carried by the Southern Express over its road, with its facilities, as the part it did carry; am I right in understanding that?

A. Yes, sir.

Q. That would practically leave the public without any competition for express matter over the road, would it not?

1346 A. Of course, when there is only one company carrying express matter there is no competition.

Q. Then, the public would lose whatever advantage came from competition, would it not?

A. Of course, if there is any advantage to be derived from competition.

Q. And the lowering of rates by the Iron Mountain express department since it came upon the road was the direct result of that competition, was it not?

A. Oh, no; not as I understand it.

Q. You don't think that the rates fixed by the Iron Mountain railroad express department were in any way produced by the knowledge that there was to be competition on that line?

A. Oh, no, sir; I should judge not; my understanding was different.

Q. What was your understanding?

A. I have never heard any cause for the reduction of rates at all, except in regard to fruit shipments; of course, not being intimate with or not having a part in the management, I have not known anything about the cause of the reduction, except in so far as fruit is concerned.

Q. You do not know, then, what was the reason of the reduction of rates, so far as reduction has been made, except with regard to fruit; what was it with regard to fruit?

A. Well, the people along the line had clamored for years for a reduction of fruit rates, and Mr. Soper had expressed himself as very desirous of accommodating them; since 1877 they have been clamoring for a reduced rate on fruit; they claimed they could not raise fruit to advantage—fruit and vegetables—and get them to market at St. Louis without a reduced rate.

Q. You are not able to say, if I understand, whether competition had anything to do with causing a reduction of rates, except so far as you have spoken in regard to fruit rates?

A. No.

1347 Q. Speaking of fruit rates, is it not a fact, within your knowledge, that one reason of a low rate for fruit was that the people brought their shipments themselves to the cars and didn't ask the company to bring them for them; did you not so understand it?

A. I never heard that assigned as a reason.

Q. Is it not a fact that much the largest proportion of fruit shipments, within your knowledge, are brought to the stations by the consignors?

A. At Little Rock, no; we take the most of it ourselves.

Q. How is it elsewhere?

A. Well, I presume that the shippers put most of it on the platforms.

Q. Deliver it on the cars, practically?

A. At the platforms, at least.

Q. On the platform from which the car takes it?

A. Yes.

Q. I direct your attention, now, sir, to the occasions on which it is alleged vexatious delays occurred at Little Rock. Your office is where?

A. In the city.

Q. How far is that from the point at which this train leaves?

A. About a mile.

Q. Were you at the station on either of those occasions?

A. I was only at the station myself when——

Mr. **Breckinridge**: After the delay occurred?

Witness (continuing): When they sent the freight forward.

Q. That is the day after it occurred, in both cases?

A. Yes, sir.

Q. You have no personal knowledge of what happened?

A. Only from what I got from all parties, those interested and not interested.

Q. You have no personal knowledge of what happened?

1348 A. I didn't see it.

Q. You were not within a mile of the place?

A. I presume not.

Q. You depended upon the reports of others for all your information about it?

A. Yes.

Q. And that is what you have testified from?

A. Yes.

Q. If I understand you, Mr. Butler, the fact is, you have no personal knowledge of what occurred; what caused the delay, if any there was; but that you, the day after in both these instances, say you did what you could to repair it?

A. I assisted them to get their freight forward by giving them extraordinary facilities.

Q. Your first knowledge of it was when you first came upon the scene; your first personal knowledge?

A. I am informed of those facts immediately every morning, if anything occurs during the night, and I made particular inquiries that day in regard to it.

Q. You wouldn't undertake to set up the result of your inquiries against the positive opinion of a reliable man who saw what happened and testifies to it?

A. I will bring a man to testify here, if necessary.

Q. I am not asking that; your attorneys could no doubt see to that; I am talking about your testimony; you are not counsel; you are only a witness; you don't mean to say you would set up your opinion against that of a reliable gentleman, who saw and testifies of what he saw, do you?

A. I don't suppose my opinion would be of consequence in such a matter.

Q. You have given your opinion in answer to questions-in-chief; you have given your opinion as to what happened; now, I ask you if you would set that opinion against the sworn statement of any reliable person who was there present and saw what happened himself?

1349 A. My statement, I hope, will be taken just as it is made; I didn't testify to seeing this thing done; I didn't see it done, for that matter; I was not present at the time that freight was delayed.

Q. You had to depend upon what information you could get to enable you to find out what had happened?

A. Yes, sir.

Q. And that is all you have intended to say as to what did happen, as to causing the delay?

A. I won't say that even; I am thoroughly satisfied that——

Mr. BRECKINRIDGE: That is not the question; the question is what you know yourself; not what you may be convinced of, but what you know.

A. You have it that way.

Q. What relations, if any, have you with the Pacific Express Company?

A. I am not employed by the Pacific Express.

Q. You do no business for them?

A. Not that I am aware of; only the same as we would with all other express companies; transfer to and from.

Q. They have an agent at Little Rock, have they?

A. If they have, I don't know it.

Q. They have no office there, then?

A. Not that I know of.

Q. I understood you to say in your examination—I may be mistaken—that you thought there was an inconsistency or a probability of embarrassments resulting from the employment of the same man as agent at any of the stations along the line of the Iron Mountain railroad for both the Iron Mountain and the Southern Express Companies. If I understood you, it was because that part of the man that was interested in the Southern Express Company might divert matter, which was legitimately heavy freight, from the railroad company, and that he could not very well serve both masters at once; was that your meaning?

A. Yes, sir.

1350 Q. Is it not a fact that during the whole time of your agency for the Southern Express Company at Little Rock, in many instances, perhaps in most instances at smaller stations, the agent has been the same for both the railroad company and the express company; was it not a fact that prior to the establishment of the Iron Mountain express department, in most cases at the smaller stations the same man was agent both for the railroad company and the express company?

A. I know but very few cases of who were agents at local stations.

Q. You were not informed upon that subject?

A. No, only in a few instances; I know there were some men who were agents of the railroad company and the express company also.

Q. In those instances with which you are familiar, the same men did both?

A. Yes, sir.

Q. Did the trouble arise you have spoken of as likely to arise in this case?

A. My answer would be based more upon what I have heard than what I know.

Q. If you were, then, to hear that in nearly all instances throughout the country, at small stations where there was only one express company and railroad, the agent was agent both for the express company and the railroad company, it would tend to show that your opinion was a mistaken one, would it not?

A. I don't know that I understand you.

(Question read.)

A. If you want my opinion in full in regard to the matter, I can give it to you; that is all I can give you.

Q. Let me call your attention to the fact you have testified, as I understand, in answer to questions on examination-in-chief, that it was not well for the same man to be agent of the railroad company
and agent of the express company, because there would be a
1351 tendency on the part of the agent to favor the express company
to the prejudice of the heavy freight business of the railroad.
Now, I ask you if it be a fact that in most instances the agents of the express company and agent of the railroad—where but one express company operated the line—are the same men, at all the small stations throughout the country, whether that state of things, if it exists, would not show your opinion to be probably mistaken?

A. I don't know what it would show; it would not change my opinion.

Q. It would not change your opinion, though it might show things were the other way?

A. If I were superintendent of a railroad company I would not allow an agent of mine to be agent of an express company.

Q. Whether there was one or were two express companies?

A. No, unless it was a railroad express; if the railroad company receives the revenues of its own express, that is the same to the Iron Mountain as if it did it as freight business; and if I were superintendent of an express business and paid local agents commissions, I would get every railroad agent I could to be my agent.

Q. It is your opinion, from your experience, that it would be better for the railroad, where an independent express company was operating the line, to have a different man as its agent?

A. Yes, sir.

Q. If your opinion is directly in the teeth of the practice in most cases throughout the entire country, would it not lead you to doubt the correctness of that opinion?

A. No, sir.

(Counsel for defendant objects to the question, as argumentative, and not calculated to elicit facts at all.)

1352 Q. I understand you to say, Mr. Butler, that the business of the Iron Mountain railroad express department was conducted precisely as the business of other express companies is; am I right?

A. There are different forms of doing the same business; some different forms.

Q. They carry the same matter, and they do the same business as any other separately organized express company?

A. They do the same business that it has been customary for express companies to do.

Q. Do you protest notes?

A. We get a notary public to.

Q. Do you agree to have it done?

A. Oh, yes; at certain points.

Q. Is it not prohibited by the superintendent of your road?

A. It never has been at my office; it was an order of the superintendent of the Southern Express Company several years ago——

Mr. **Breckinridge**: I am not talking about the Southern Express Company; I am talking about the Iron Mountain express department. Let us please attend to one matter at a time.

A. In our money tariff sheet there are two different orders; one is to the effect there shall be no paper taken for collection requiring protest, except you know the paper can be protested at that point; that is the clause I have always been governed by.

Q. Is there not another clause on that subject?

A. I think there is.

Q. What is that?

A. I think that is to the effect that—I don't know whether it is on the present classification or the old one. I have seen it on one classification.

Q. To what effect is it?

A. To the effect that paper requiring protest shall not be taken.

1353 Q. If other companies, then, do receive paper to be protested, they do a business which your company is directed by its superintendent not to do?

A. Well, I suppose that if they——

Mr. **Breckinridge**: Answer the question.

A. I don't understand.

(Counsel for defendant objects to the question, as a repetition of what has just been said, as cumulating the record, and as argumentative.)

A. There can be but one answer to the question as you put it.

Q. Then it would be very easy to make, one would think.

A. That is, if other companies do that.

Q. That is business your company does not compete with?

A. No; I could not say that, because I have never paid any regard to that order.

Q. You have disobeyed that order?

A. There are two orders, and I have always taken the same paper for one company that I would for another. I don't know but what I had done it long before I ever saw an order. I am governed by my own judgment in regard to those things entirely, so far as my office is concerned.

Q. Not by the orders of the superintendent?

A. Well, I might be governed by the superintendent's orders also, when I had them, outside of the classification or tariff sheet, outside the printed instructions.

Q. When you get the printed tariff sheets you pay no attention to them?

A. You are mistaken about that; I do pay a great deal of attention to the printed instructions.

Q. Why do you disobey this order that is made as to not taking paper which requires to be protested?

A. Because I have been told to use my judgment where it came in conflict.

1354 Q. The superintendent has modified to you his printed tariff order?

A. Yes, sir.

Q. So far as that order is obeyed the Iron Mountain express department does not compete with any other company which does take paper to be protested at its point of maturity?

(Counsel for defendant objects, as argumentative.)

A. If one company does that business and the other don't, they don't compete in that particular.

Q. So far as your company does not do that business it is not competing for it, is it?

A. It can[illegible]t in that case.

Q. In answer to Col. Thoroughman's question you stated you had not heard the term "accessorial service" applied at all until the institution of this proceeding, I believe?

A. That is what I said.

Q. Will you tell me what you mean by "accessorial service" when you use that term?

A. What I mean?

Q. Yes; you, yourself?

A. I have never given the matter much thought; I suppose I inferred about the same that has been talked about—about the gathering up of freight to be shipped and distributed after it was received at an office.

Q. Your idea of accessorial service, then, as I understand, is the gathering up and distributing at terminal points or at local stations of freight from consignors and to consignees; that is what you mean?

A. Yes, sir.

Q. You don't include in accessorial service the presence and care of a messenger in charge of the goods? I am talking about your idea of the word "accessorial."

1355 A. I suppose any part of the business, even to the carrying of it, is accessorial; any portion of it is accessorial service.

Q. What would be the business itself if everything were accessorial?

A. It is made up of accessorials, isn't it?

Q. I would think not, but I am not testifying. What is the business itself; what do you define the express business to be?

A. You asked what I meant by the word "accessorial;" I answered that.

Q. I ask you further; do you mean to exclude all these other things from accessorial service; I want to know exactly what you mean in using that term.

A. I had never thought much about it; I have got my opinion from hearing the matter talked of; I was at Memphis.

Q. In this meaning, which you attribute to the term "accessorial service," you have not included the service and presence of a messenger in charge of the goods on the road, have you?

A. I had not looked upon that as part.

Q. The handling of goods at either end of the road; had you included that?

A. Yes, sir.

Q. I mean by handling of the goods the loading of them into the car.

A. Yes, sir.

Q. You had considered that part of the accessorial service?

A. That is part of the receiving and forwarding.

Q. I understood you to say you made a tariff of rates for the express department of the railroad company which you say you are now superintendent of?

A. No; I am general agent.

Q. What road is it?

A. The Little Rock, Mississippi & Texas.

Q. Running from Little Rock to where?

1356 A. Running from Little Rock to Arkansas City on the Arkansas river, and then west to Monticello, Drew county, Arkansas.

Q. Do they have any wagons and horses in connection with their express service?

A. They hire at Pine Bluff; they put one on last Monday; a week ago Monday they put on a horse and wagon; hired a horse and wagon.

Q. Just one?

A. Yes; and at Little Rock they hire also; that is——

Mr. **Breckinridge**: At the other end also?

A. There is no business at the other end, except at the depot; it is a small place; no occasion.

Q. How long is the line of that road?

A. About 150 miles.

Q. You made the tariff?

A. Yes, sir.

Q. You fixed the rates; did you not have the entire expense and outlay, including this wagon service, whether bought or hired, in your mind when you fixed the tariff of rates?

A. No, Judge; I had not a particle considered it; never once thought of it.

Q. Have you any opposition on that road; any competition?

A. No.

Q. No other express company running?

A. No.

Q. Never has?

A. No; it is a new road; newly-finished road.

Q. You didn't estimate this expense at all in making your tariff?

A. Never once thought of it; I simply made it up so much per hundred for so many miles; 25 miles so much per hundred; 25 to 50, so much per hundred; 50 to 75, so much per hundred.

Q. Will you be kind enough to tell me what is the through rate per hundred upon that road?

1357 A. From Little Rock to Arkansas City is a dollar and a half a hundred; it is about double freight rates; what we would charge on a freight train.

Q. What is the distance?

A. The distance from Little Rock to Arkansas City I cannot tell exactly; I think it is about 130 odd mile.

Q At a dollar and a half a hundred?

A. Yes, sir.

Q. For that through run?

A. Yes, sir.

Q. At what proportion have you fixed your local rate?

A. We don't run quite to Arkansas City; there is a change there seven miles from Arkansas City, where we transfer freight from one to another, and send it west to Monticello; on that freight we charge $1.75 per hundred.

Q. How far is Monticello?

A. I have not got the distance; it is over 150 miles from Little Rock.

Q. What are your money rates?

A. From Little Rock to Arkansas City I think it is $2.00 a thousand on money.

Q. How have you fixed the local rates upon that basis?

A. We charge to Pine Bluff—that is the next principal point, a distance not quite fifty miles—we charge to local shippers a dollar and a half a thousand; on bank moneys and to parties who forward large amounts of money we charge a dollar.

Q. How do those rate compare with the rates charged by the express department of the Iron Mountain road?

A. They are somewhat higher, as is also the freight tariff, higher on that road.

Q. Very much higher, is it not?

A. Well, some points it is considerably higher; yes; it is a new road; a very light business; the tariff was made more for trial than otherwise at first.

1358 Q. And you have no competition?

A. There is no competition; no, sir.

Q. Am I wrong in saying that I learned from one of the witnesses the other day that the through rate from St. Louis to Texarkana, for express matter, was $2.00 a hundred?

A. I don't know what the tariff is.

Q. Two dollars and a half?

A. I presume it is $2.50.

Q. Two dollars and a half per hundred?

A. I presume so.

Q. Do you know the distance from here to Texarkana?

A. About 489 miles, I think.

Q. If I recollect right, it was $2.50 per hundred on ordinary freight matter per hundred pounds; what would be the proportion of excess charged by you over that?

A. You mean on the Pine Bluff road?

Q. Yes.

A. We have no such distances on the Pine Bluff road.

Q. On any relative distance?

A. That would be governed a good deal by the printed freight tariff; the object is to charge about twice as much on a passenger train as we would on a freight train.

Q. Your rule, then, is in making your tariff to double the charge made on freight carried by freight train, when it is carried by passenger train?

A. Yes, sir; that is the principle we went on there.

Q. If I am right in my understanding that the Iron Mountain express department charges $2.50 per hundred pounds from here to Texarkana, a distance of 489 miles, if you charge over the line from Little Rock to Arkansas City, a distance of 150 miles, $1.50 per hundred pounds, the difference would be very excessive on your charge against theirs, in proportion to distance?

1359 A. It is not expected, and it was not made with the intention that there would be much hundred pound freight carried; it is simply to get at about the right price to charge on small packages, for five, ten, fifteen or twenty pounds, and these are governed by the amount charged per hundred. I don't suppose that they carried any one package of one hundred pounds from Little Rock to Arkansas city; I may have carried one or half a dozen. It was not made so much with the expectation of carrying one hundred pound freight as it was for small packages.

Q. The rate, as it stands, is largely in excess of the Iron Mountain express department rate.

A. Oh, yes; the rate was not controlled by an express man really.

Q. Who did control it; I thought you had made it?

A. Mr. Redfield suggested the rate charged; he is president of the Pine Bluff road.

Q. So you yourself, as an express man, did not advise that rate?

A. I made the tariff, but he made suggestions in regard to it.

Q. But he controlled you in making them?

A. He made suggestions; of course I accepted them.

Q. Col. Redfield really controlled the making of those rates, not you?

A. He did in that way; he didn't order—gave no order in regard to it; he simply suggested.

Q. His suggestions were a law to you?

A. I took them that way; though it was understood, if we found it should be too high, it would be a great deal better to make a tariff to fall from than it would to rise on.

Q. Do you know the rates of the Little Rock and Fort Smith road?

A. Yes, sir; I am acquainred with a great many of them.

1360 Q. What do they charge?

A. I think from Little Rock to Fort Smith $1.75 on regular per hundred pounds.

Q. And money?

A. That I cannot tell you.

Q. What is the distance?

A. About 165 miles; the tariff is always greater in proportion on short distances than long ones.

Q. You spoke of a number of railroads which, according to your personal knowledge, were running express departments?

A. Yes.

Q. Are you able to tell me what proportion by mileage of roads in the country on which express freight is carried are managing their own express, and what proportion are not?

A. No, sir.

Q. Have you any idea?

A. No; I have never examined or thought of the subject.

Q. Have you any idea of the amount of railroad mileage in the country?

A. Well, not any correct one; it is long since I read it; it has passed my mind.

Q. Does it not approximate 100,000 miles?

A. I would judge not so much.

Q. It is my recollection it approximates 100,000; what would you think it to be?

A. I think about 70,000 miles; it has been a long time since I looked.

Q. I think you are mistaken; I think it is nearer 100,000 than 70,000; have you any idea how many miles of road you have described as running their own express departments?

A. No; I cannot say I could tell how many miles.

Q. Do you think it is as much as 3,000 miles?

A. Yes, sir; I judge a good deal more than that.

Q. Five thousand?

A. Yes; I should judge there was over 5,000.

1361 Q. Six thousand?

A. I could not say positively without looking up the matter.

Q. Do you know that the amount bears a very small proportion to the whole amount of mileage—railroads which are running their own express departments?

A. If it is five or six thousand to-day it is five or six thousand more than were running their own express departments five or six years ago.

Q. You have not answered my question; that is argument perhaps, but it is not an answer; I am not asking what is going to happen; I ask you what exists; whether the number of miles you have described as included in the roads which run their own express don't bear a very small proportion to the number of miles of railroad in the country on which express companies are running?

A. I suppose a far greater number of miles are run by express companies than railroad express departments; some express companies don't run as many miles; others run more.

Q. I am not speaking of particular express companies, but in the aggregate; the Iron Mountain Railroad Company operated an express department prior to June, 1880, did it not at one time, Mr. Butler?

A. I have heard so; I have no knowledge of it.

Q. Was it not done during the time of your connection with the Southern Express Company at Little Rock?

A. Never after the line was completed to Little Rock.

Q. You have no knowledge of that?

A. Nothing that I saw.

Q. I supposed it was within your knowledge that it was done?

1362 A. The first business done by the Southern on the Iron Mountain was in running from Little Rock north when the road was done fifty miles probably; that was while I was agent for the Southern Express.

Q. You spoke of some matter of prorating here between companies; do you know the rule for prorating established by the Iron Mountain Express Company over its line?

A. Only by what I have been told.

Q. You have no personal knowledge of that?

A. And as I said, I had sometimes prorated, overcharged, charged it back; I think, however, that was while I was with the Southern Express.

Q. You have no personal knowledge about this matter which would enable you to testify in regard to it?

A. I had no part in auditing the accounts.

(At this point an adjournment was had until April 28, 1881.)

ST. LOUIS, *April* 28, 1881.

The cross-examination of Mr. BUTLER was resumed, as follows:

By Mr. BRECKINRIDGE: You spoke in your examination-in-chief, Mr. Butler, of the firm of Bernays & Maxwell, who, if I remember correctly, you spoke of as expressing satisfaction with the Iron Mountain railroad express?

A. I believe I started to speak of something; I was not allowed to go through with it, or didn't go through; it was claimed to be hearsay evidence.

Q. My recollection is you spoke of them as expressing satisfaction?

A. No; I was not going to speak in that relation; there has no one expressed dissatisfaction; that was in regard to another
1363 thing which I supposed would not be admissible evidence, being something that was said by others.

Q. That is the only relation in which you mentioned Bernays & Maxwell?

A. Yes, sir.

Q. I misunderstood you; refresh your recollection about that; my recollection is that you so stated, and my impression or information is that on the proof being read it shows you did?

A. My recollection is I didn't say all I started out to say in regard to that.

Q. Do you remember what you did say?

A. I said as one instance, to illustrate some question—I forget now what the question was—both of them have expressed to me in the same way.

Q. Did you say in your examination-in-chief what it was they had said to you?

A. I don't think I did.

Q. Didn't you say in your examination that they had expressed a desire to have all their matter come by the Iron Mountain express department, saying they got it quicker and cheaper?

A. I think I got that far; that they had expressed a desire that their goods should always come that way; that they got them quicker, and the cost was more uniform; they did so express themselves.

Q. Have you not in your office employed a Mr. Maxwell, who is a brother of this Mr. Maxwell of the firm of Bernays & Maxwell?

A. No, sir.

Q. Is there no such person employed by the Iron Mountain express department?

A. The agent at Hope is a brother of Mr. Maxwell.

Q. When did he go into the employ of the Iron Mountain express department?

A. I don't remember.

Q. Was it since this satisfaction was expressed by Bernays & Maxwell?

A. I could not say.
1364 Q. What is your best impression?
A. I presume it was afterwards and before also.

Q. Where is Hope?

A. I suppose it is nearly one hundred miles south of Little Rock.

Q. At whose instance was he employed?

A. That I could not tell you.

Q. These gentlemen were old patrons of the Southern Express Company during the term of your service with the Southern Express Company, were they?

A. Yes, sir.

Q. And friends of yours?

A. I have always numbered them as among my friends.

Q. They are special friends, are they not?

A. No, sir.

Q. Do you know any sewing-machine dealers in Little Rock, Mr. Butler?

A. Yes, sir.

Q. Please name them?

A. The most prominent ones are S. B. Kirby and A. M. B. Graham, manager of the Singer.

Q. Do they do a large business over the express route between here and Little Rock, and elsewhere?

A. They are both, I would judge, doing a pretty good business.

Q. Did Mr. Kirby ship last summer a considerable quantity of sewing-machines by your railroad express department?.

A. Yes, sir; he did.

Q. Does he ship exclusively by the Iron Mountain express department, or in part by the Southern Express?

A. I think that he gives the Iron Mountain the principal part; he ships some by the Southern Express, I believe.

Q. Does he ship by the Southern to points where he could ship by the Iron Mountain?

1365 A. I don't know that; I have not looked into the matter.

Q. Your impression is he gives you most of his goods, and you don't know whether he gives you all or not?

A. I know he does not give us all; that is, I know he has not all the time given us all; he is not giving us very much, if any, now.

Q. The season, perhaps, is dull now; is he shipping any at all now by express?

A. Occasionally.

Q. Very rarely?

A. Not near as much as he did at one time last year.

Q. He is shipping by freight, isn't he?

A. I don't know.

Q. Does he not get a less rate by your express than you offer to ordinary shippers?

A. No, sir.

Q. Has he not done so?

A. No, sir.

Q. Do you know the rate at which the Southern Express Company carries for him?

A. No, sir.

Q. What rate do you carry for him at?

A. The regular tariff rate.

Q. Without reduction or diminution?

A. Without rebate.

Q. In any form?

A. In any form.

Q. What do these sewing-machines weigh as an average when prepared for shipment?

A. They weigh from 85 to 105 and 115; different kinds of machines weigh different weights.

Q. These Kirby deals in, what are they? Does he deal in any one kind exclusively?

A. No, sir; he deals in nearly all kinds.

Q. And they weigh when ready for shipment—I mean when boxed—in the neighborhood of 85 pounds?

1366 A. All the way from 85 to 115.

Q. I would like to ask you, Mr. Butler, if you know the average weight of the sewing-machines shipped by Mr. Kirby; or can you approximate it?

A. Yes; I know the average car-loads of his machines; that is, I have seen the average; I have seen the average as shipped from Chicago; the average on one car-load was a little less than 100 pounds; another one was a little more than 100; the average on the two cars I examined was about 100 pounds apiece.

Q. You didn't weigh them yourself?

A. I weighed some of them.

Q. For the purpose of this average you speak of?

A. No; I didn't weigh those.

Q. Where were those weighed?

A. Chicago.

Q. You have weighed some yourself?

A. Yes, sir.

Q. Any number?

A. Oh, yes; now and then; I have weighed occasionally.

Q. With what results?

A. About the same result; since he has been shipping, the greatest of his shipments—the Wilson—I have never weighed any that weighed over a hundred—Wilson's.

Q. I will ask you if you didn't say to Mr. Kirby, since the Iron Mountain express department was established, and you were in charge of its office as agent at Little Rock, on one occasion at least, if not more, that you would take his machines at 100 pounds each, but that if he shipped them by the Southern Express Company you would weigh every one of them, and as they would weigh in excess of 100 pounds the Southern Express Company would therefore have to charge him more than if he shipped them by you?

A. I did not.

Q. Did you say nothing like that?

1367 A. No, sir; nothing he could infer anything of that kind.

Q. Not at any time?

A. No.

Q. You have never in any way intimated to him it would be cheaper to send by your express than by the Southern?

A. No.

Q. Never have told him you would make a cheaper rate than the actual weight?

A. I have never told him anything by which he could construe that I would carry freight cheaper than they could be carried by the Southern Express Company.

Q. Or hold out the idea that it would be better to deal with you than with the Southern Express Company, because of an arrangement that you could make about weights?

A. No; I have understood very well the situation, and have been very careful not to give anybody any better rates than I have the Southern Express.

Q. Do I understand you, Mr. Butler, to wish to be understood as saying you have not said, at an time, anything to Mr. Kirby which had for its object the diverting of freight from the Southern Express Company to the Iron Mountain express department, upon the suggestion that it would be done either at cheaper rates, or upon a lower grade of weights?

A. The argument held out so far as the express business was concerned, to Mr. Kirby was, that the fact the Iron Mountain express department had so reduced the rates from the former rates—from the former rates of the Southern Express Company—that I thought it the duty of him and every other shipper to patronize the company that had reduced the rates; so far as the express department, I told him that we would do anything in the world to accommodate
him at any time, as I always had as agent for the Southern.
1368 I think there is no shipper in Little Rock who ever said I
did anything to disaccommodate him; I think they will all acknowledge I did everything to accommodate; I told Mr. Kirby I would make every effort to accommodate him, and that the reduction by the Iron Mountain express having been made by them, that I thought that shippers ought to give all their freight to the company making the reduction.

Q. Have you not, in making these remarks, also argued with them that as the Iron Mountain express department was charging the Southern Express Company the same rate it was charging all other shippers, they would manifestly see they could get cheaper rates from the Iron Mountain than the Southern, because if the Southern was not to make anything, they would have to charge more than the Iron Mountain?

A. I have told him this in connection with his trying to get a reduced rate on a large number of machines: "Mr. Kirby, we can make no special rate for you as long as the Southern Express Company is running on our road; but if the Southern Express Company were not running on the road, I don't know but what you might get a special rate on a large quantity of machines, ten or twenty, or such a matter." That has been my reply to him when he asked for a special rate; I have never even gone so far as to ask the superintendent if I could make a special rate for him, because I knew it was impossible to do so.

Q. You have never, as I understand you, used the argument to him to which I just alluded, that is, where the Iron Mountain was charging the Southern the same it was charging all other shippers, if the Southern was to make anything by its business it must charge them more, and therefore he must see it was cheaper to ship by the Iron Mountain.

A. No; I have understood all the time the Southern Express Company was charging the same we do in such instances as where he was shipping his machines; he only shipped them short distances on the road usually, and to points where the express tariff 1369 wouldn't be very much more than the freight tariff; in some instances the consignee would say—I would say to him, or make an arrangement with him, they would stand the freight charge, and Mr. Kirby has frequently come to me and paid the difference between freight and express charges.

Q. Have you ever made to Mr. Kirby promises or suggestions that you would use your influence to secure for him cheap car-load rates on the Iron Mountain road when he would send his machines by freight?

(Counsel for defendant objects, as irrelevant.)

A. Mr. Kirby has asked my advice in regard to how to get lowest rates by freight, and I have told him what I would do, but I have never written any letters or asked anybody to assist him in getting a low rate.

Q. What was it you told him you would do?

A. I would apply to the assistant general freight agent; I advised him to apply to the assistant general freight agent.

Q. For what purpose?

A. To get low rates on his machines from Chicago.

Q. By freight?

A. By freight.

Q. Not by express?

A. Not by express. I have also advised him to try two different lines out of Chicago. I would have done that to any man, whether he is a shipper by the Iron Mountain express or not—any friend of mine.

Q. Didn't you promise your aid to him in making these arrangements with the Iron Mountain Railroad Company for low rates?

A. That would be implied, that I would do anything I could to accommodate him; he might have inferred that, and I would have done it if I had any influence, but I had none.

Q. Did you promise to give him such aid?

1370 A. I told him I would do anything I could to accommodate him.

Q. Including that?

A. I would have included that; I don't know that I promised that thing particular at all.

Q. Did you do it?

A. No, sir; I never wrote or said anything to any of the officers of the freight department that I remember of; I know I have not written.

Q. Have you ever, since your connection with the Iron Mountain express department and pending this litigation, of course, said anything to any merchants or others at Little Rock, with a view to secure patronage for the express department of your road, concerning a black list to be kept of those who persisted in patronizing the Southern Express Company; accompanying it with the statement that the Southern Express Company would soon go off the road, and then those who were on this black list would find they were prejudiced in their dealing with or obtaining rates from the Iron Mountain express department, because of their persistency in supporting the Southern.

A. I have never made mention of any black list. I have told merchants at Little Rock that if they should patronize the Southern up to the time that the Southern should leave the road, that of course they would be entitled at that time to the same rights and privileges old patrons had, but I have said also that it would be almost an impos-sibility for an agent or employé of the Iron Mountain express to consider them with the same friendly personal regard they would if they were patrons of the Iron Mountain express; that while I didn't suppose it would make any particular difference with me, of course there were things that a man would be called upon to do personally, and not as business matters, that almost any man would feel differently about. I have never kept any black list, and wherever a patron of the Southern Express Company, or rather
1371 the patron of the Southern Express Company in Little Rock,
has offered us freight I have done everything in my power to accommodate him, equally as much so as I have all regular patrons of our company. I have not had to make any threats of a black list, or to make any very extraordinary exertions to secure patronage of the people of Little Rock.

Q. What was the object of these conversations with those who shipped by the Iron Mountain, and of these hints that there would inevitably be prejudice on the part of the Iron Mountain in time to come, against those who had been persistent friends of the Southern?

A. I don't know that I have ever said it to a patron of the Southern; I don't remember to have said it to a patron of the Southern Express.

Q. To whom was it said; to what class of people.

A. Well, some people I have said it to who never shipped a package by express that I know of.

Q. In the nature of a philosophical disquisition?

A. It has been in the nature of conversations in regard to express business, never used as a threat by me.

Q. Not intended as a warning even?

A. No.

Q. Then it was in the nature of an abstract philosophical disquisition upon human nature as it operated among express men; was it?

A. It probably was in nearly all instances; I may have said it to a man who was a customer.

Q. But it was not with any design to promote the prosperity of the Iron Mountain, nor to diminish the business of the Southern?

A. I won't say that, Judge.

Q. What was the design then?

A. In all cases——

Mr. **Breckinridge**: Coming to particulars, did you not tell one Giovani, who keeps a restaurant in Little Rock, in substance, that if he didn't withdraw his patronage from the Southern Express, 1372 you would put him on what you called a black list, or a list, and charge him more than other people when the Southern Express Company went off the road?

(Counsel for defendant objects, as irrelevant.)

A. I was told by somebody that Giovani had said he had understood me in that way; I went to Giovani and asked him about it, and he said no, that he didn't say that. I then told him—it was three or four days after I had the first conversation with him—I said: "I want you should understand distinctly and emphatically that such is not the case; that we will not charge you more at any time for your patronage of the Southern Express Company; we cannot charge you more; we work by a tariff." I think, probably, he is one of the parties. I then said: "That personally I might do more for you as a patron of the Iron Mountain Express, but in regard to business I could not."

Q. What was the object of that explanation?

A. I have solicited—that was the occasion—Giovani's business; I asked him why he shipped by the Southern Express, and I told him we had been the parties to reduce the rates, and I thought he ought to give us his patronage, and he said: "They bring my meat from St. Louis cheaper than you do." I says: "I don't see how they can." I don't know whether it was him or another shipper. I think I went and examined one of the through invoices and found where they had charged him less than we charged the Southern Express Company to induce him to ship that way.

Q. Hadn't you reasoned with him, and didn't you reason with him and others to show that the Iron Mountain could do his business for less, because they charged the Southern the same as they charged him?

(Counsel for defendant objects, as incompetent and irrelevant.)

A. Only as far as friendship was concerned; business is 1373 business with me, and as I said before, the patron of the Southern Express Company at Little Rock who has shipped occasionally by us I have treated just as well as regular shippers, I don't know but what a little better, in order to induce him to come over.

Q. You discriminated in his favor rather?

A. No; I don't say that; I say I don't know but what I might have treated him.

Q. You don't say you did?

A. I may have got his order a little late; they give us calls sometimes very late; we have to hurry up frequently from his place of business to get to the office where they bill the goods for the train; that is the accommodation I have extended to him.

Q. Your meaning, as I understand, is this: That if by these conversations or warnings or threats, or whatever you might call them, this patron of the Southern Express Company was induced to come to you, you sought to encourage him by treating him better, if possible, than your regular patrons?

(Counsel for defendant objects.)

A. Treating him as well at least; I accommodate them all to the last moment I can.

Q. If a man, having one of these conversations with you, in which you speak of the natural effect on the human mind of opposition and hostility engendered, came in and gave you an opportunity, you made it a point he should see there was no prejudice?

A. Yes, sir.

(Counsel for defendant objects to "the natural effect on the human mind.")

Witness (continuing): In regard to this Giovani business, I hastened to him to keep him from being misled in regard to the matter; I didn't know who he might have talked with, and I went to him as soon as I could; I don't think he had got more than one shipment between the time of the first conversation and the second one;
1374 I went to him and told him I understood he said so and so;
he said he had never said it; he said: "I understand positively that you made no such claim." I told him I didn't want him to understand me that way.

Q. Your object was to disabuse his mind of what you say was a false impression of the conversation?

A. Italians are of a rather suspicious nature, I presume; they are said to be; he may have got a wrong impression from what I first said to him; I never threatened him; I never told him such would be the case at all.

Q. Your object in going to see him was to disabuse his mind of an impression which you thought he had incorrectly received?

A. The second time.

Q. Even in that you did explain to him that you thought you could do the business as cheap or cheaper than the Southern Express Company?

A. I never mentioned the word "cheaper."

Q. I thought you said he showed you bills of lading or invoices?

A. No; I said he had invoices by which the Southern Express Company had collected from him an amount less than what they had paid to the Iron Mountain Express

Q. I don't think I have got yet exactly what you did say to Giovani, which you think now he misunderstood; you had a conversation——

A. I was telling what I didn't say.

Q. Will you tell me what you did say?

A. I have not an idea; I have no recollection of what I said to him, only I know I didn't say he would be put on the black list, or that he would have to pay higher rates.

Q. Did you say anything about a list of any sort to him?

A. Not to my recollection.

1375 Q. Did you say nothing about any paper record you were keeping?

A. No.

Q. Did you say nothing to him whatever on that point?

A. I could not have said any such thing, because I claim to be truthful; I never kept any such record, and never intended to keep any such record.

Q. Still, a man may, in conversation, speak of an intention which he does not carry out; you are sure you said nothing from which he could correctly infer any such thing?

A. I am very confident I said nothing of the kind; I don't know what he might infer from what I did say; I am very confident I made no such threats.

Q. Can you tell me what you did say?

A. I recollect better about the second conversation than I do about the first; I told him—in three or four days from the time I had the first conversation with him—Mr. Edgell had the first conversation with him as he was eating dinner there.

Q. Mr. Edgell one of your men—clerks?

A. Yes, sir; he is route agent; he was at that time; he is now route agent for the Pacific Express Company in Texas.

Q. Well, you were going to say he had a conversation with Mr. Edgell?

A. I think that was the first; then I went to see him, after hearing what he had said; I went to see him again to see if he had misconstrued anything that was said in the first place; I disabused his mind of it immediately.

Q. You cannot remember what you said to him in the first conversation?

A. I cannot.

Q. This conversation which you understood he had misunderstood?

1376 A. I recollect having told him we were the ones who had reduced the rates, and I thought he ought to patronize the railway express; that there was no danger of their increasing the rates after the Southern Express should go; and that if the railroad should form a profitable connection with the Southern Express Company, I was satisfied they would increase the rates; I have told that to a great many others; that is my honest, candid belief.

Q. You have told them that if the Southern Express Company succeeded in maintaining its position on the road, and the express department did not remain on the road, that the rates would go up?

A. I have.

Q. That was based on the idea that competition was necessary to keep rates down, I suppose?

A. Not necessary in the case of a railway express.

Q. Was it based upon that idea?

A. No; it was based on the idea, I had always been informed, that their tariff was at its biggest paying rate—at its best paying rate; that if they were to charge less they might carry more freight, but would not make as much money by it.

Q. You think that is an answer to my question?

A. You asked me what it was based on.

Q. I asked you whether your opinion, expressed to these people, about what would happen if the Southern Express Company maintained its position, and the Iron Mountain express department were withdrawn—whether that was based on the impression that competition was necessary to secure low rates?

A. No; not in this case.

Q. What, then, was it based on?

A. I was just explaining that the Southern Express Company tariff had been made with the view of making the most money.

Q. Did you not say to Dr. C. J. Lincoln, a druggist in Little Rock, that it would be healthier, or some similar expression, for him if he would patronize the express department of the Iron Mountain 1377 road; that it would be better for him after the Southern Express Company left the road?

A. I told Mr. Lincoln that I thought it would be better for him to patronize the Iron Mountain express department, and that I thought perhaps it might engender a better feeling in the freight department.

Q. That if he would patronize the express department of the Iron Mountain road he would probably get better rates for freight?

A. I told him, so far as a special contract was concerned, or as pecial rate was concerned, on any large quantity of freight, that while now the express department could not make those special rates, for the reason that if they made a reduction for one man they had to make a reduction for all—the Southern Express Company particularly; that if there were no Southern Express Company—that if the Southern Express Company should withdraw from the road—that then, undoubtedly, for a large quantity of freight, he would be able to make a special rate for freight he wanted to get quickly, with the express department.

Q. In these conversations with Dr. Lincoln didn't you hold out the idea that the Southern Express Company would presently have to leave the road?

A. I have told everybody that has asked my opinion in regard to the subject that I didn't see how they could stand the expense of running the route under the circumstances.

Q. And have you not, on that basis, advised them they had better turn round and make friends with the Iron Mountain railroad while this controversy was going on?

A. If I have done so, it has certainly been a friendly advice.

Q. Observe, I didn't ask whether it was friendly; the question was what you did.

A. I presume I have said what they would infer——

Counsel: To convey that idea?

A. Yes, sir.

1378 Q. Have you not, in any of your conversations with Lincoln and others, given them to understand that, in your opinion, as a representative of the Iron Mountain express department, the result of this litigation must be to drive the Southern Express off the road, and that it would be better for them, in every way, to give their patronage to the Iron Mountain express department, and so make it friendly to them, rather than be considered its enemies?

A. I rather think I have.

Q. Have you not considered it part of your duty, as a representative of the Iron Mountain road, to create that feeling, and foster it as much as you could?

A. In cases where I have had those conversations, it has been mostly to contradict an erroneous idea that has been promulgated by the employés of the Southern Express Company. People have told me—patrons of the company have told me—that the Southern Express Company people told them it is necessary to keep us on here for an opposition, for competition; if we should go off, the railway company would put up their rates; and I told them I thought the contrary was the case. The question has been asked by almost every express patron in Little Rock.

Q. You have done what you, as a faithful representative of the Iron Mountain express department——

WITNESS: To correct that idea.

Q. By creating the impression that the Southern Express Company was bound to go off the road soon, and that those who didn't patronize the Iron Mountain express department now would be very apt to find that in some way they were prejudiced in future in their dealings with this road?

A. You are mistaken. They have asked my opinion in regard to that; I told them frankly there could be very little change made; it might be in so far as the matter of friendship, but if an agent were to mistreat any patron of the company, at any time, either
1379 before or while they were patrons of the Southern Express
Company, or afterwards, because they had been patrons of the express company, it would take but a short time for an agent to wear himself out; the company would have no use for an employé who would treat any of their patrons discourteously or disoblige them.

Q. You observe there was no question of treating patrons discourteously; the question was of inducing patrons of the other company to become their patrons, by offering special facilities.

A. I have told you all along we had offered no special facilities.

Q. Didn't you endeavor to create the impression upon the minds of men, when you talked about it—considering it part of your duty as a representative of the Iron Mountain express department—that if there were any special rates or favors to be granted after the Southern Express Company was driven off the road, the old friends of the Iron Mountain would be more likely to get the benefit of them than those who had dealt with the Southern up to the end?

A. I don't remember to have told any patron of the Southern Express Company anything of the kind.

Q. Have you stated it to anybody?

A. I cannot recollect of stating that to anybody.

Q. In that form?

A. In that way, no.

Q. Do you ship organs from Little Rock to different points by your express?

A. There have been none shipped recently, that I am aware of.

Q. Do you remember having shipped some a while ago?

A. Yes, sir; we shipped a great many.

Q. Do you remember the rate you charged on them?

A. We charged them merchandise rate.

Q. One rate?

A. Yes.

1380 Q. Do you remember where they were going?

A. No.

Q. Is it your habit to charge one rate?

A. Yes, sir.

Q. By what designation is this class of freight known among expressmen; is it called light and bulky?

A. I do not so consider it; if I had, I would have charged more.

Q. Didn't you solicit this freight yourself, Mr. Butler?

A. Not at first, no.

Q. At any time?

A. I don't remember to have spoken with but one person in regard to it.

Q. Who was that?

A. In the soliciting sense of the word?

Q. Who was that?

A. I spoke to—I forget the old gentleman's name.

Q. Dealers in Little Rock?

A. Yes, sir.

Q. Smith & Co.?

A. They came to me without any solicitation.

Q. What occurred between you and them about this particular freight—these organs?

A. They telephoned round, "How much do you charge on organs, of such a value?" The reply was so much a hundred, giving merchandise rates.

Q. One rate?

A. Yes, sir.

Q. But not as light and bulky freight?

A. No, sir.

Q. Have you not habitually charged the Southern Express Company more than one rate on freight less bulky than those?

A. Less bulky; we have charged them very frequently three rates on packages that were less bulky, but more valuable.

Q. I am speaking of other than pack parcels.

1381 A. I use the classification sheet; it makes no mention of pianos or organs, I think I am confident it does not; and we have, I think, charged the Southern Express Company strictly in accordance with the classification sheet.

Q. Do you think this rate for organs has been also in accordance with that sheet?

A. There is no mention made of it.

Q. I will ask you if this freight, this organ freight, is not light and bulky, and belongs to that class, as known among expressmen?

A. I have never measured an organ to see whether it would come under that class. The same bulk of an organ will not weigh so much.

as the general run of dry goods or merchandise; it wouldn't run as bulky as sewing machines I don't believe, and those are mentioned on the classification sheet as one rate—regular merchandise rate.

Q. If I understand, you say you have not charged the Southern Express Company more than one rate on freight less bulky than these organs?

A. I didn't say anything of the kind.

Q. Please tell me what your answer to that is.

A. I said I charged the Southern Express Company strictly in accordance with the classification sheet.

Q. Independent of that what is the fact; have you not charged the Southern Express Company more than one rate on freight less bulky than this organ freight?

A. I don't think I have, unless it has been pack parcels and money packages, valuables.

Q. We are not speaking of either money packages or pack parcels.

A. I say I don't think I have charged them more than one rate on less bulky articles.

Q. Does your classification give any definition of what is light and bulky?

A. A great many articles are mentioned.

1382 Q. Does it give you any rule for determining what qualities go to make light and bulky?

A. It says you may take sewing-machines at regular rates, take furniture—a list of articles to be taken at two rates, and—I cannot remember it; I can send and get a classification sheet.

Q. This classification sheet you speak of using—as having made made in your capacity as general manager of the express department of the road——

WITNESS: No, not general manager; general agent.

Q. General agent of the express department of what road?

A. Little Rock, Mississippi & Texas.

Q. Didn't you copy the Southern classification?

A. I took part of it from the Southern, part from the Iron Mountain, and part of it I made to suit myself.

Q. How does the money classification compare with the Southern?

(Counsel for defendant objects, as having nothing to do with this case.)

A. While they are not as much as they were by the Southern when the Southern first run the Memphis & Little Rock road, they are more than they are now, and more than they will be in a short time, when I make some corrections; the tariffs, both freight and money, have been made too high to start on, but they were made with the intention of falling from.

Q. The idea being, if any mistake was made, it was better to make it against the public and correct it?

A. No; that the public would be better satisfied to have the rate reduced than raised.

Q. The road would be better satisfied by it being high than low?

A. The road is engaged in doing business for the price that will bring them the most money, and if the rate is found too
1383 high, it can be lowered from better than it could be increased; the public are better satisfied in that way.

Q. You think now it is too high?

A. Yes; I think it is too high.

Q. If I understood you correctly, you stated the railroad express tariff was $2.50 per thousand dollars from Little Rock to Monticello, Arkansas?

A. I think that was it.

Q. How far is it?

A. I don't remember exactly; I think it is between 140 and 150 miles. I spoke about making a low rate, and Mr. Redfield says: "Them fellows down there have been paying five dollars a thousand by stage; if we carry it for half that I don't think they will grumble at it."

Q. It was thereupon fixed at that?

A. I said perhaps it would be well enough to make it that to start on, and then come down on it; but I told you the other day it was not made so much for a thousand-dollar rate as for smaller amounts—packages of small amounts; we have carried no packages of a thousand dollars over the road from Little Rock to Monticello.

Q. That road, as I understand, has just been opened?

A. It has only been running a month—the express department only a little over a month.

Q. Where was this that Mr. Redfield spoke of their having paid five dollars?

A. By stage.

(Counsel for defendants objects to what Mr. Redfield said, as irrelevant and incompetent.)

Q. You spoke of your desire to reduce rates with a view to accommodate the public. Are you aware the Iron Mountain express department has been charging the Southern Express Company six rates on its money packages, money safes?

A. Yes, sir.

1384 Q. That would be fifteen dollars a thousand, wouldn't it?

A. Fifteen dollars a thousand for currency.

Q. On its safes?

A. Whatever it contained; it may be gold, may be diamonds; in weight there may have been $200,000 in two pounds.

Q. If only a thousand, it is six rates, isn't it?

A. It is six rates on whatever it is.

Q. If the rate is two dollars and a half a thousand, six rates would be fifteen dollars, wouldn't it?

A. We don't charge it in that way; it is six times merchandise rates a hundred pounds.

Q. If a safe only had a thousand dollars in it, and it weighed a hundred pounds, that would be six times two dollars and a half, fifteen dollars, wouldn't it?

A. Yes, if the rate were two dollars and a half per hundred.

Q. What is the rate from here to Denison?
A. One dollar and seventy-five cents.
Q. To Texarkana?
A. I don't know.
Q. You don't know it is two dollars and a half?
A. No.
Q. You have known of these high rates existing, which would produce these results, have you not?
A. Not to my own knowledge.
Q. You have heard them reported; you have heard them spoken of as existing?

(Counsel for defendant objects as testimony-in-chief.)

A. No, sir; not in that connection; anything from St. Louis to Little Rock, or Little Rock to St. Louis.
Q. As a fact, have you not known that the six-rate rule was prevailing against the Southern Express Company under orders of Mr. Aikin?
A. The orders of Mr. Aikin were to charge anybody who
1385 shipped money in safes, or money packages, and didn't dis-
close the contents to us—didn't give it to us as so much
value—we would charge them six rates on it.
Q. Has that applied to anybody but the Southern Express Company?
A. Not to my knowledge.

(Counsel for defendant objects to the whole of this testimony as testimony-in-chief, as not growing out of the examination of the witness, and as not legitimate cross-examination.)

Mr. Breckinridge, of counsel for plaintiff, says: The witness was here produced at my request this morning, my understanding being that I should examine him further, and without limit as to whether it should be cross-examination strictly or not, upon what occurred yesterday.

Q. The point is, whether you have remonstrated, out of your desire to produce satisfactory rates for the company, and prevented high rates, as shown on the other road; whether you have done anything to produce lowering of rates on those roads, as against the Southern Express Company, where it seems much higher rates prevail?
A. You mean with the Iron Mountain?

COUNSEL: Yes.

A. No; I have had no occasion to; I have not been solicited to do anything of the kind; I don't volunteer my assistance on any occasion, unless solicited, certainly.
Q. Have you not expressed your satisfaction at these rates?
A. I don't remember to have said much about it, either one way or the other.
Q. I didn't ask that; have you not expressed yourself as well satisfied at these high rates?

A. Well, having the interests of the Iron Mountain company at heart——

1386 Mr. BRECKINRIDGE: No, please, in any interest; I don't care what you had at heart.

A. I may have done so; I don't remember to have expressed myself in regard to it particularly.

Q. Will you please tell me how far it is from St. Louis to Little Rock?

A. I believe it is 345 miles.

Q. Can you tell me what the Southern Express Company's money tariff from St. Louis to Little Rock was prior to June last?

A. The regular rate was $1.50; and on packages of ten thousand and upwards, $1.25, I think.

Q. What is your rate from Little Rock to Pine Bluff, money rate?

A. For the purpose of covering packages of small amounts, as I said before, it is $1.50; but it has been made $1.00 for bankers, and for large amounts.

Q. One dollar and a half a thousand for small amounts?

A. Yes, sir; I have discovered numbers of people will, if they have much to carry, get on the train and carry it themselves; and I propose very soon to reduce the rate; it is too much to get any revenue out of.

Q. How far is it?

A. Between forty and fifty miles.

Q. From Little Rock to Pine Bluff?

A. From Little Rock to Pine Bluff.

Q. Can you recall any rate at all as high between points of at all like distance which ever existed in the territory of the Southern Express Company while you were connected with it as that?

A. Yes, sir.

Q. Name one place.

A. Between Memphis and Little Rock, in 1865 and 1866.

Q. Just after the war; any other?

A. Between Little Rock and Pine Bluff, about that time.

1387 Q. I mean of late years; that was just after the war; say since 1874.

A. It lasted some years after the war, I guess; I think there was a reduction of the money rate made in 1874 by a new tariff.

Q. Now, I ask you whether, since 1874, you can recall, anywhere in the territory of the Southern Express Company, as high a rate on money as that now prevailing between Little Rock and Pine Bluff, regard being had to distance?

A. I recall a rate of the first of June last from Little Rock to Lonoke, of $1.00 a thousand, and even shorter distances; ten miles was $1.00 a thousand.

Q. Those were at places between Lonoke and Little Rock, where there is very little patronage, I suppose?

A. Probably about the same as between Little Rock and Pine Bluff.

Q. Do you remember the rate from Little Rock to Memphis over the road on which Lonoke was a station at the same time?

(Counsel for defendant objects, as incompetent and irrelevant, as this case has nothing to do with the Memphis & Little Rock road.)

A. The rate for some time past has been $1.00 a thousand all the way over the road.

Q. All the way to Memphis?

A. I wouldn't be positive about it.

Q. The distance is 145 miles?

A. They claim 135 miles, I guess.

Q. Has it not been the habit of late, since you became agent of the Iron Mountain express department, and since this litigation commenced, to underweigh express freight going over the Iron Mountain express department, or cause the weight to be understated on way-bills?

A. Not by me.

Q. Has it at any time since the first of June, last June, to your knowledge?

1388 A. I recall no instance of underweights that I have any knowledge of; a few days ago we had a shipment at the depot that we weighed there, and found, I think, that it weighed some forty pounds more than it was marked to weigh.

Q. Is that intended as an answer to my question?

A. I said in answer to your question that I didn't recall anything weighed by us.

Q. Do you know any instance in which you agreed to take it at less weight than the fact no matter by whom weighed or by whom marked?

A. There are certain classes of freight we make allowance on; we make the same allowance to the Southern express on the same freight.

Q. What are those?

A. Sawdust and sacks round ice.

Q. You know personally of no other cases in which freight has been agreed to be taken at less than the actual weight?

A. No.

Q. For the purpose of inducing shipments?

A. No; I am pretty careful to avoid anything of the kind; in fact, the orders of the superintendent are to put the correct weights upon packages and charge for the correct weights in all instances.

Redirect examination by Mr. Broadhead:

Q. You say in regard to articles such as sawdust and sacks round ice you make reductions?

A. Yes, sir; that is, we charge usually for the ice itself; whatever the ice dealer sells the ice for we take his weight for that.

Q. You treat the Southern Express Company in the same way?

A. The same manner; those are our orders.

Q. Do you know of any instance in which the Southern
1389 Express Company has shipped over your line articles which

weighed more than they were represented to weigh upon the waybills?

(Plaintiff's counsel objects, as irrelevant and incompetent.)

A. The shipment I spoke of was presented by them the other day, a shipment of silver—specie—on which we were only charging one rate at that time; it was marked to weigh forty pounds less than it weighed.

Q. That was a shipment of the Southern Express Company; was it?

A. Yes, sir.

Q. Where was the shipment made from?

A. From Little Rock.

Q. That is the only instance you know of now, is it?

A. The only one of recent occurrence; we frequently find articles brought there for shipment that are not entered on the scrip they give of articles to be shipped; we check them over and find articles that are not entered there on that scrip.

(Counsel for plaintiff objects to the answer, as being a volunteer statement of the witness of testimony not called for; the question is in no ways alluded to.)

Q. Who fixes the tariff of charges made by the Iron Mountain express depertment?

A. The superintendent.

Q. Have you ever received any instructions from the superintendent, or any other officer in charge of the Iron Mountain express department, to make special rates for parties in Little Rock?

(Counsel for plaintiff objects.)

A. No, sir.

Q. That is, Mr. Kirby or the Italian?

A. Never received any instructions to make any.

1390 Q. Whatever you said to them you did of your own accord as a friendly act, did you, or as an official act?

A. Well, it was friendly in most instances; in some instances, undoubtedly to influence shipments; in conversation with parties who were not shippers I have said the same thing I have to others.

Q. Did you ever hold out the idea to any person in these conversations that individuals would be charged higher than the regular rates of shipments by the Iron Mountain express department in case the Southern Express should leave the line?

A. Never.

Recross-examination by Mr. BRECKINRIDGE:

Q. This instance you speak of, where you found the weight less than the fact, you were present and saw it, were you?

A. No, sir.

Q. You weighed it, I presume, and found the discrepancy?

A. No, sir; it was reported to me.

Q. You were speaking of what somebody else told you; you have no personal knowledge about it at all, then?

A. I speak of it in that way from the fact everything that goes there I am held accountable for, and in making a report of those matters I always speak of them in the same way as if I saw it myself.

Q. When you come to swear of what you know you don't wish to be understood as stating you know that fact at all, do you?

A. The matter of the specie, no; I don't know of my own knowledge.

Q. Therefore, all you have said about it was said upon the report of others, you not having been present; you have no personal knowledge of it?

A. Not individually.

Q. You know only what others told you. Don't you know that was incompetent to testify?

1391 A. I didn't give it a thought; I wouldn't have mentioned it, perhaps, if I had thought about it.

Q. Do you personally know of any case in which there have been underweights of shipments by the Southern Express Company of any matter?

A. I have never weighed the freight myself.

Q. Have you ever seen any of it weighed?

A. I say I have never weighed any of it—I have weighed freight on two or three occasions.

Q. Did you not weigh the freight that Sunday spoken of in your testimony yesterday, when there was a day's delay?

A. Yes, sir.

Q. Didn't you weigh it that day?

A. Yes, sir; I weighed it that day.

Q. Didn't you find in that freight a discrepancy against the Southern Express Company?

A. Nothing but what would be about balanced.

Q. I am not asking what the effect would be; I ask the fact, if you didn't find it underweighed by the Southern Express Company against themselves?

A. There were packages weighed two or three pounds under, and some two or three pounds over.

Q. Wasn't nearly every package in the lot underweighed—put as weighing more than it really did weigh, by the Southern Express Company?

A. No.

Q. There was quite a large number of them; some weighed two or three pounds more.

A. I got the scale tested; I found the scale up town two or three pounds more.

Q. That was the freight which you offered such great facilities for getting off; you weighed it yourself?

A. I expect I weighed it.

Q. Was that the facility you offered?

A. The facility I spoke of was getting for them an extra car.

Q. Did you get it?

1392 A. It was got through me.

Q. Did the Southern Express Company ask you to apply for it?

A. The Southern Express Company asked me.

Q. Didn't they ask the superintendent of the road?

A. They asked Mr. Buchanan for it.

Q. Before you applied?

A. No; not before I applied; I telegraphed down; they got there soon after.

Q. In answer to Col. Broadhead, you said these representations which you made partly with the design of affecting business, were made without the instigation of your superiors in office in the Iron Mountain railroad; you made reports to them of what was going on, what you were doing, did you not?

A. I made my reports of business.

Q. They were frequently present on the ground; were they not?

A. They came to Little Rock occasionally.

Q. They knew the general course you were taking with reference to the business of the company; did they not?

A. I cannot say that they did.

Q. You didn't conceal it from them?

A. I never do anything to conceal; I never attempt to conceal anything.

Q. Therefore didn't they know what you were doing?

A. I don't remember to have ever told the superintendent, Mr. Aikin, what efforts I was making, or what arguments I was using, or anything about it; I may have done so, and I may not; I don't think I have.

Q. Or the manager, Mr. Kerens?

A. I have seen but little of Mr. Kerens.

Q. Or any other officer connected with the express department of your road?

A. There is no other officer I report to.

1393 Q. I am speaking of who you talked to; the superintendent of the road would take an intelligent interest in the express department, would not he?

A. I have never talked to him about it.

Q. You have never had any reason to suppose that your action was disapproved by your superiors?

A. No.

Q. Never have been recommended to change it?

A. No.

Re-examination by Mr. BROADHEAD:

Q. Do you know what Mr. Aikin, or any other principal officer of the Iron Mountain express department, have been informed, or know anything about what you have said to Mr. Kirby, or any other men in Little Rock or elsewhere, in regard to what would be done hereafter?

A. They have never been informed.

Q. You made no reports to them about it?

A. No.

Q. You didn't tell them what conversation you had with Mr. Kirby or the Italian?

A. No.

Q. Or anything else?

A. I don't remember to have ever repeated it.

Q. Did you ever tell them any advice you had given to any of these shippers, by which you sought to induce them to patronize the Iron Mountain express department instead of the Southern Express Company?

A. I don't think I ever have.

Q. Have you extended the same facilities to the Southern Express Company that you have to the other patrons of the Iron Mountain express department?

A. I have tried to be perfectfully impartial.

Q. Have you not received instructions to make no discrimination?

A. Repeatedly.

1394 Q. From the superintendent of the Iron Mountain express department?

A. Yes, sir.

Q. You have obeyed those instructions as far as you had anything to do with the business?

A. I have. I don't think the Southern Express people have ever found any fault with the treatment they have received from me.

Recross-examination by Mr. Breckinridge:

Q. Have they not constantly protested in every form that the action of the company towards them in its various demands was illegal and contrary to the orders made by the circuit court of the United States?

A. So far as paying three rates upon pack parcels and money safes.

Q. Six rates——

Witness: They have protested.

Q. Have they not protested against making advance payments?

A. I don't know that they have particularly at my place; they said they were ready pay it any time I wanted.

Q. Didn't they protest against the demand for advance payments?

A. I think not.

Q. You have reason to believe they are quite well satisfied with your dealings with them?

A. I think so.

Q. You speak of your personal or official relations?

A. My official relations so far as I controlled.

(Signature waived.)

1395 Charles Mendenhall, being of lawful age, and having been by me first carefully cautioned and sworn to tell the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, was examined, and he did thereupon depose, testify, and say as follows:

Direct examination by Mr. BROADHEAD:

Q. Where do you reside?

A. Cincinnati, Ohio.

Q. What business are you engaged in?

A. Superintendent of the express department of the Ohio & Mississippi railroad, also the Marietta & Cincinnati railroad.

Q. What is the length of the Marietta & Cincinnati railroad, and between what points does it run?

A. It runs between Marietta and Cincinnati, and branches extend to Hillsborough, Ohio, and Portsmouth, Ohio.

Q. That road has running connection with the Baltimore & Ohio?

A. The Baltimore & Ohio.

Q. And with the Ohio & Mississippi road?

A. Yes, sir.

Q. It is a part of the eastern through line between St. Louis and New York, by way of Baltimore?

A. Yes.

Q. Is that the connecting line between Cincinnati and Parkersburg?

A. Yes, sir.

Q. How long have you been engaged in the express business?

A. About four years; ever since the beginning of the railroad express on our roads.

Q. Had you been connected with railroad transportation before that time?

A. No, sir; except as a heavy shipper.

1396 Q. You have resided in Cincinnati and Marietta?

A. Yes, sir.

Q. What are the classes of goods embraced in the term "express matter" carried by express companies, or by railroads doing an express business, generally, without going into details?

A. It is difficult to answer that definitely; it mainly consists, however, of perishable matter, valuable matter, small packages.

Q. Packages which require rapid transportation?

A. Yes, sir; and care that cannot be given on freight trains to them.

Q. Fresh meat, vegetables, live stock, and transportation of money packages?

A. Yes, sir; collections; C. O. D. packages.

Q. Are you familiar with all the business that is done by what is called express business—express transportation?

A. I think so.

Q. Your jurisdiction extends over the Ohio & Mississippi and the Marietta & Cincinnati?

A. Yes, sir; and on East-bound freight from St. Louis East.

Q. Direct line from St. Louis to Parkersburg?

A. Yes, sir; or further on to Baltimore and New York; I have charge of East-bound freights as far as New York.

Q. Are those two roads doing their own express business, the Ohio & Mississippi and Marietta & Cincinnati?

A. They are.

Q. How long have they been doing their own express business?

A. About four years.

Q. You make shipments over the entire line to New York, do you?

A. Yes, sir.

1397 Q. Does it do any express business over any other line except this through line to New York and its own branches—branches of those roads?

A. Strictly speaking, it does not; we, however, receive freight for the Baltimore & Ohio to complete the transportation.

Q. If a package were received by your company to be transported to New York you give a receipt, a through bill of lading to New York, its destination?

A. Yes, sir.

Q. You have running arrangements, then, with intermediate lines between Cincinnati and New York; that is, your own line?

A. Yes, sir.

Q. If you received a package at Cincinnati for transportation to Omaha, Nebraska, what is your rule in regard to that?

A. We have through billing arrangements with the Pacific Express.

Q. How is it in regard to shipments to Texas and Arkansas?

A. We have through billing arrangements with the Iron Mountain and Pacific also.

Q. With the Iron Mountain Express, and also with the Pacific Express?

A. Yes, sir.

Q. You ship as far as Denver, Colorado?

A. Yes, sir.

Q. What company have you arrangements with for that end of the line?

A. The Pacific Express.

Q. That carries to Denver?

A. Yes, sir; we also have arrangements with Wells, Fargo & Company to go as far as San Francisco.

Q. What rule in regard to rates prevails in cases of shipments to any of those points; for example, Cincinnati to New York or Cincinnati to San Francisco; how are the rates arranged with the forwarding companies?

A. They are divided on a percentage.

1398 Q. What is the basis of the percentage?

A. As far as possible it is mileage; though in some cases it is an arbitrary percentage agreed upon.

Q. Owing principally, I suppose, to the arrangements that can be made with the forwarding company?

A. Yes, sir.

Q. And it depends altogether upon what arrangements can be made; there is no general rule in regard to the through shipments?

A. No; just an agreement entered into, supposed to be for mutual advantage.

Mr. **Breckinridge**: But chiefly based upon mileage, I understand?

A. That is the basis as a general rule, though that basis don't enter so much into it, as a factor, in the case out far West, where rates are higher than they are in the East.

Mr. **Broadhead**: If rates were higher out West, then upon a package sent from Cincinnati, of course by the Ohio and Mississippi railroad, to be forwarded to Denver, Colorado, would that reduce the cost of transportation on the Ohio & Mississippi railroad according to the mode of prorating under your arrangement?

A. Yes, sir; for example: If our rate was a dollar and a half from Cincinnati to St. Louis, and the Pacific rate was six dollars from St. Louis to Denver, the through rate would probably be about seven dollars from Cincinnati. The difference would be divided in proportion to the two locals I have mentioned—one dollar and a half and six dollars—the ratio they bear to each other.

Q. The amount that would be paid to the Ohio & Mississippi would be ascertained by dividing the whole cost of transportation by the mileage, and ascertaining the rate per mile, would it?

A. No; in the instance you speak of, it would be divided on the two locals.

1399 Q. That is the local from St. Louis to Denver, and Cincinnati to St. Louis?

A. Yes, sir.

Mr. **Breckinridge**: It would reduce yours more than the other?

A. The half dollar which is lost on the through business would be lost between us at the prorate of six dollars to a dollar and a half; they would lose more than we would actually in dollars and cents of the half dollar.

Mr. **Breckinridge**: You would lose more in the proportionate rate?

A. As compared with mileage; yes, sir.

Mr. **Broadhead**: Do you know whether those rules prevail in regard to all transportation over express companies, or railroads doing express business?

A. They do; it is customary to make thorough rates at somewhat less than two local rates.

Q. As I understand, you were familiar with the character of the matter transported by express companies generally in the United States?

A. Yes, sir.

Q. Adams Express Company and the United States Express Company?

A. Yes.

Q. Southern Express Company?

A. Yes, sir.

Q. Is the business done over the lines of railroad you have spoken of a general express business?

A. Yes, sir.

Q. What does it embrace, the business done over those lines?

A. The character of the freight you mean?

COUNSEL: Yes.

A. A very miscellaneous character.

Q. What I want to know is, does it embrace a general express business?

A. It embraces a general express business; we take anything else that any other company takes.

1400 Q. You carry the same matter that the United States Express and Adams Express do?

A. Yes, sir.

Q. Have you had an opportunity of becoming acquainted with the business done by those companies, the Adams and the United States?

A. Yes, sir.

Q. They both have offices in Cincinnati?

A. Yes, sir; they transfer to us and we to them every day.

Q. You know the character of business done by those companies?

A. Yes, sir.

Q. Do you do a collecting business on your lines?

A. Yes, sir.

Q. Protest notes?

A. Yes, sir.

Q. And transport moneys and valuables?

A. Yes, sir.

Q. All business that is done by express companies?

A. Yes, sir.

Q. Have you tried to make yourself familiar with the express business during the time you have been engaged in it?

A. I have.

Q. Do you know of any reason why an express business cannot be as well done by a railroad company as by a separate and independent express company?

A. I do not. In many instances it might be done better, I think.

Mr. BRECKINRIDGE: You mean by "better," by a railroad acting as itself?

(No reply.)

By Mr. BROADHEAD: In what respects would there be an advantage in favor of the railroad, if any?

A. In the first place, the railroad doing its own express, is in full sympathy with the department; that compels from its agents—
1401 who generally act as express agents also—the closest attention to their duties and satisfaction to the public, as the credit of the whole road is interested in any dissatisfaction.

Q. What can you say in regard to the satisfaction given to the public since those roads have operated their own express department?

A. The fact that our business is steadily increasing would seem to me a guaranty of that fact.

Q. Do you know what express companies did business over those lines prior to the time when they undertook to do their own express business?

A. The Adams Express.

(Counsel for plaintiff objects, as leading into a branch of inquiry which will throw no light in this case; as irrelevant.)

Q. Over the lines between St. Louis and Baltimore by way of——

WITNESS: Baltimore & Ohio, Marietta & Cincinnati, and Ohio & Mississippi railroads.

Q. Do you know how the public has been accommodated, comparatively speaking, since the Adams Express has left, and the companies have adopted their own express departments?

(Counsel for plaintiff objects, as the witness has shown he was not connected with the road when the Adams Express was upon it, and as irrelevant. The witness went into the business when the railroad commenced the express business.)

A. Our express rates are lower since we went on therefore; I presume the public is accommodated better, in that respect, at least.

Q. How has it been in regard to the cost to the railroad companies, if you know, for doing that business; in other words, has the net profit of the business been equal to or less than it was before, to the company?

1402 A. I can only speak of the Ohio & Mississippi and the Marietta & Cincinnati.

Mr. BRECKINRIDGE: Are you able to make any comparison, since I understand you were not connected with this matter prior——

WITNESS: I know what other companies were paying before they went on.

Mr. BRECKINRIDGE: You know it from reports?

WITNESS: From seeing the contracts.

Mr. BRECKINRIDGE: I think it should be shown by the contracts.

Direct examination resumed:

Q. If you know anything in regard to that, I will get you to state it.

A. On the Marietta & Cincinnati road the net earnings have been about the same as they were under the Adams Express.

(Counsel for plaintiff objects, as irrelevant and incompetent.)

WITNESS (continuing): On the Ohio & Mississippi railroad the net earnings have been nearly three hundred per cent. more than was paid by the Adams Express, as shown to me by the auditor.

(Counsel for plaintiff objects, that the witness is speaking of memoranda furnished by the auditor, of which he has no personal knowledge; and this is not the way to prove it.)

Q. Do you know how it is in regard to charges, tariff rates for transportation, then and now?

(Counsel for plaintiff objects, as before.)

A. I made up the tariff for the Marietta & Cincinnati and Ohio & Mississippi made a very material reduction from the Adams tariff on those roads.

Q. Have you heard of late, Mr. Mendenhall, anything about what are called accessorial charges?

A. Yes, sir.

1403 Q. What do you understand to be accessorial charges connected with the express business?

A. I don't know of any.

Q. You have your office in the city of Cincinnati?

A. Yes, sir.

Q. Have you an office separate from the offices of the railroad companies, over whose lines this business is done in Cincinnati, a regular express office?

A. Yes; three.

Q. A place for receipt, depositing, and removal of goods in Cincinnati?

A. Yes, sir.

Q. Do you employ horses and drivers, and wagons and messengers to secure freight?

A. Yes, sir.

Q. That has been done, has it, since the commencement of carrying on of this business by the railroad companies?

A. Yes, sir.

Q. When a package is brought by a shipper, a consignor, to your office to be transported by express to any point upon the line, do you allow anything to the shipper for bringing it to the office?

A. No, sir.

Q. Is anything charged for the collecting of those packages by your own agents, drivers, and wagons in the city of Cincinnati?

A. No, sir.

Q. Is there any difference made between the cost of transportation of articles brought by the shipper himself and articles collected by the agents of the express company?

A. No, sir.

Q. What advantage is it to the express department of a railroad company, or to an express company, to have those facilities for the collection of goods for transportation by express?

A. It is very much to the convenience of the public, and
1404 very much to the convenience of the express company;
an express company, to pursue the plan of delivery that is in use in freight departments, that is, notice by postal, would require immense warehouses, and would also subject perishable matter to delay, which might be disastrous to it.

Q. What is the reason that no charge is made, then, for the collection of those articles as a part of the cost of transportation to the shipper or consignee?

A. It is cheaper for us to get the matter off our hands—out of our hands as soon as possible.

Q. Is the express business increased by means of those facilities you afford to the public?

A. Very largely.

Q. Would there be the same amount of business done by the express department in the absence of those facilities as there is with them?

A. It would be fatal to the express business.

Q. You have no limits, I suppose, within which you collect those articles in Cincinnati, have you?

A. Yes, sir.

Q. This express department over which you have charge, is it under the joint control of those two railroad companies, or is it a separate and independent department belonging to one or the other?

A. An independent department belonging to one or the other—belonging to each different road; the accounts are kept entirely separate.

Q. The business is done in the same office and by the same agent at Cincinnati?

A. Yes, sir.

Q. You have a general superintendence over the two lines?

A. Yes, sir.

Q. Would it be more convenient for the express company, or the
express departments of those railroad companies, to have packages
collected in wagons and delivered at stated periods at the express
office, or to have them brought in separate parcels by the ship-
pers from time to time during the day; and would there be
1405 any saving in the matter of the employment of clerks, or
store room, or anything of the sort?

A. The calling for goods is done largely for our own convenience and economy; it saves clerks, gets the packages promptly in time for the trains they are to go on, and is a matter of general convenience and economy, both to express companies and shippers.

Q. How far, if at all, in making up your tariff charges, rates of transportation, does the cost of employing wagons, drivers, horses, etc., at different points, for the collection of express matter, enter into your computation of rates?

A. It does does not enter at all; we have a rate from Cincinnati to points, say on the Ohio & Mississippi road, the rate is the same where we have a wagon for delivery and where we have not, in many cases.

Q. I will ask if you know anything as to how the Adams and United States Express Companies fix their basis of rates in a table of tariffs, or any other express company but your own?

(Counsel for plaintiff objects, as incompetent and irrelevant.)

A. We have a number of common points with the Adams and other companies, in some of which delivery is made, in others there is no delivery; as our rates are the same as the others, I presume the charge of wagon service does not enter into their plan.

(Counsel for the plaintiff objects to the argument or presumption of the witness; we want facts.

Q. Did I understand you to say the Adams Express Company, or the Southern Express Company did business on those roads before the establishment of their own express?

A. The Adams Express Company?

Q. I have spoken to you about the gathering up of express matter for distribution over your lines; how about the distribu-
1406 tion of articles that you receive, their destination being at
Cincinnati, for example; is there anything charged for the delivery of those articles—parcels?

A. There is not.

Q. Are you able to speak in regard to other express companies doing business in Cincinnati as to whether they make any charges for the collection of packages, or the delivery of packages, when taken from a railroad?

A. They do not.

(Counsel for plaintiff objects, as irrelevant and incompetent.)

Q. Leaving out the matter of employment of wagons and messengers to collect express matter for transportation, what percentage of the whole cost of transportation do the other expenses incurred by the express department of your road bear to the whole cost of transportation, if you know—if you have made an estimate of it; if you have not, I don't want you to just guess at it?

(Counsel for plaintiff objects, as incompetent and irrelevant, having no relation to this controversy.)

A. I have the figures at Cincinnati, not here with me; I can furnish them if you wish.

Mr. Breckinridge: But not at present?

Witness: No.

Q. Is there any express company doing business over those lines of road other than the departments of the roads themselves?

A. A portion of the Springfield Division—Altamont, Illinois, to Beardstown, Illinois, for which the American Express pay us a per diem—pay the Ohio & Mississippi railroad.

Q. They pay a per diem, you say, to the railroad company?

A. Yes, sir.

1407 Q. Have you ever found any difficulty in making through
shipments of express matter to any point in the United States where you wished to send it over your line?

A. No; or beyond.

Q. How are your receipts given for through shipments—only for forwarding to the end of your line?

A. Our receipts read, I think, the same as other express companies in that respect.

Q. In making a shipment from Cincinnati to New York what companies have you arrangements with for through transportation?

A. The Baltimore & Ohio.

Q. Do you give a receipt for through shipments to New York from Cincinnati when you receive express matter to be carried to New York?

A. Yes, sir.

Mr. Breckinridge: You mean the Ohio & Mississippi railroad gives a receipt for the matter to New York.

A. Yes, sir; from here to Cincinnati, and the Marietta & Cincinnati from Cincinnati.

Direct examination resumed:

Q. What lines of transportation have you arrangements with for shipment to Texas and the Southwest?

A. We have arrangements with the Iron Mountain railroad and Pacific Express.

Q. These receipts that you speak of are given in one instance by the Ohio & Mississippi railroad, and in the other by the Marietta & Cincinnati, I suppose?

A. Yes, sir.

Q. It depends on the fact whether the shipments are made east or west of Cincinnati?

A. Yes, sir.

Q. Do you know of any facts, Mr. Mendenhall, why the cost of transportation of express matter, done by a railroad through a department of its own, would not be as cheap as if done by a separate and independent company running over its line. I have
1408 asked you before about facilities for doing business; I now ask about the cost?

(Counsel for plaintiff objects, as incompetent and irrelevant and improper, calling for the opinion of the witness and not for facts.)

A. It can be done cheaper, for several reasons.

Q. What can be done cheaper?

A. Express service. One reason is, we do not pay our agents any commissions.

Mr. Breckinridge: You say you don't pay your agents anything?

A. No; not for doing express business; we are able to utilize the company's property, such as houses, stations, platforms, trucks, and scales; we are also able to utilize the auditor's department without cost to ourselves or extra expense to the railroad; and in many other minor ways I could mention.

Q. (Direct ex.) Does it ever happen on the line of either of the roads you have spoken of, the Ohio & Mississippi or the Marietta & Cincinnati road, that the agent of the railroad company doing railroad business at the several stations along the line of those roads are also engaged in the transaction of express business of the company?

(Counsel for plaintiff objects to the form of the question, and as incompetent.)

A. Agents of the railroad are almost invariably express agents.

Mr. **Breckinridge**: You mean in your case or all cases?

A. In my case—on my roads.

Q. (Direct ex.) Can one man do business of both departments, and how far does that extend; does it extend to all stations or only intermediate stations between large cities or points of population?

A. Smaller and intermediate points.

1409 Q. At what additional cost to the company are you able to say?

A. I have not the figures here; I can send them to you from Cincinnati.

Q. There is no competition, as I understand you, on the principal roads that you are superintendent of, the Ohio & Mississippi and the Marietta & Cincinnati; no competition on the part of any express company doing express business over your lines?

A. No, sir.

Q. Do you know of any other railroads, from your own personal or business knowledge, in the United States that are doing their own express business as you are?

(Counsel for plaintiff objects to "business knowledge;" it calls for something more than personal knowledge.)

A. Yes; quite a number.

Q. What other roads?

A. The Baltimore & Ohio, Philadelphia & Reading, St. Louis & Iron Mountain; that is as far as I can go of my personal knowledge.

Q. I understand you say you think your own roads have profited by doing this express business over them instead of having it done by other companies?

A. Yes, sir.

Cross-examination by S. M. **Breckinridge**, Esq.:

Q. Mr. Mendenhall, how long is it since the organization of the Ohio & Mississippi express department?

A. About four years—not quite.

Q. If I understand, you then for the first time became connected with either the railroad or express business?

A. Yes, sir.

Q. Prior to that time what was your business?

A. Iron manufacturer.

Q. In what department of iron manufacture?

1410 A. I manufactured nails, merchant bar, sheet-iron, pig-iron.

Q. General merchantable iron?

A. General merchantable iron.

Q. And prior to that what was your occupation—prior to that time you were engaged in the manufacture of iron?

A. I was a short time clerk in a wholesale grocery house at Cincinnati.

Q. Prior to that?

A. Nothing; college.

Q. I understand your entire business experience with the railroad and express departments, by any active participation in it or any personal knowledge, except as a citizen, generally, has come since you became manager of the express department of the Ohio & Mississippi road?

A. Yes, sir; except as a shipper.

Q. The experience of a shipper does not throw very much light, does it, upon the mode in which profits are made and the interior working of the express business?

A. Only so far as charging any more for delivery at the store, and getting it to the office of the express company. It would that.

Q. Your experience as a shipper would only throw light on whether it cost anything to have the express company call for the goods or send them to the office?

A. About all.

Q. That is about all?

A. Yes, sir.

Q. So, I may say, absolutely, your entire business experience and knowledge of express matters or railroad matters which is of any value has come to you since you have been connected with the Ohio & Mississippi express department?

A. Yes, sir.

1411 Q. That has been during four years. Did you become manager of the Marietta railroad express department at the same time you did of the Ohio & Mississippi?

A. No; I was first in the employment of the express department. I went through the different grades until I became superintendent.

Q. I didn't mean to put the question in a form to elicit that; I want to know whether your employment by the two companies was coincident?

A. Within a month or so of each other.

Q. Were they formed at the same time?

A. About a month different.

Q. Which was the first?

A. The Marietta & Cincinnati.

Q. Did they procure and promote the formation of the Ohio & Mississippi Express?

A. I don't exactly understand your question.

Q. Was the Ohio & Mississippi express department formed at the instance or solicitation in any degree of the Marietta Railroad Company?

A. No.

Q. Which preceded in organization, the Baltimore & Ohio express department or the Marietta express department?

A. They were identical as to time, I think.

Q. Were they not under the same control somewhat?

A. Yes, sir.

Q. Didn't they urge the formation of the express department of the Ohio & Mississippi Railroad Company?

A. I think not. As I read the papers, the Ohio & Mississippi road was abandoned by the Adams, same as the other two roads were. The roads could not not agree with the companies on terms, and the Adams voluntarily left all three of the roads.

Q. Do you know why it left?

A. Difference as to terms.

Q. It was not willing to pay what the railroad companies demanded?

1412 A. No, sir; I have seen the correspondence of it.

Q. Then the Baltimore & Ohio first formed its express department, and the Marietta then formed its express department?

A. Yes, sir.

Q. And then immediately after followed the Ohio & Mississippi?

A. Yes, sir.

Q. Was the object in forming these three express departments belonging to the three railroads to make a continuous line under, as near as possible, continuous control to the East, like that which had been run over these lines by the Adams?

A. I don't know that I can answer that exactly; as I have read the matter, the Adams Express Company and the different roads could not agree as to terms, and they voluntarily left the roads; they left the Ohio & Mississippi road a little later than the other, because the contract didn't expire.

Q. The railroad companies recognized the express service as essential to be performed by somebody, did they not?

A. Yes, sir.

Q. Is it not a fact that the express service is essential to the business of the community?

A. Unquestionably.

Q. Wouldn't it be destructive of very important interests if the express business was not done upon an important line of road?

A. Undoubtedly.

Q. Going anywhere in that country?

A. Undoubtedly.

Q. Knowing it to be essential, they arranged their own express departments to fill the gap when they failed to contract with the Adams Express Company?

A. Yes, sir.

Q. I would like to ask you whether the most efficient mode of conducting an express line composed of various connecting
1413 roads is not that which most nearly likens its service to one express company, doing through business on those connecting lines?

A. It is the same in fact, for an express company has its divisions, which compare with railroad divisions more or less.

Q. But just as your connections are perfect, and your necessity of transferring and rebilling is diminished, your service is apt to be more expeditious and more satisfactory to the public, is it not?

A. Yes, sir.

Q. Therefore, the longer your route under one control the better, is it not?

A. I don't know I exactly understand your question.

Q. Therefore, the longer route you can make under one control the better the service is apt to be for the public, is it not?

A. Yes, sir; I don't know I exactly understand what you mean by "one control."

Q. If you, therefore, organize an express department which will, under one control, carry express matter from here to New York, will it not be better than if you break the line by half a dozen interests, with the chance of delay and transfer and rebilling?

(Counsel for defendant objects.)

A. Delays and transfers are injurious and so affect the express service; I don't know that it makes a material difference whether these are all under one control or not, providing these transfers and delays do not occur.

Q. Have you not found it to aid the efficiency of the service upon the two roads you control, that they are under one control in your person, as superintendent of both?

A. Certainly, as far as my two roads are concerned; but I do not think it would be the case, as we may have too much territory to control to watch it carefully and thoroughly.

1414 Q. That could be done by subordinate agents under one control; one head?

A. If distributed; yes, sir; that is the reason I didn't understand what you meant by "one control;" by subdividing afterwards.

Q. Now, if the Baltimore & Ohio line, over which you run, could be included also under your superintendency, don't you think you could make the service from Cincinnati to Baltimore and Washington more efficient than you could make it with separate superintendency; if that were added to your superintendency of the Ohio & Mississippi and the Marietta?

A. No; it was formerly conducted in that way, and was subdivided, and the revenue largely increased.

Q. How was that; how did that come?

A. At the beginning Mr. W. H. Trego was superintendent of all the express departments, including the line to Pittsburg, Chicago, as well as the Ohio & Mississippi, and Marietta & Cincinnatti Expresses; it was found too much for him to look after successfully, and the experiment was tried of putting the trans-Ohio department of the Baltimore & Ohio road—that is, all the line west of the Ohio river—in charge of a superintendent, and the Marietta & Cincinnati and Ohio & Mississippi line in charge of a superintendent. The business was largely increased, and the expenses very much diminished. That system is now in force to-day.

Q. Who is Mr. Trego; in whose employ was he?

A. Of the Baltimore & Ohio road.

Q. He was for a time in charge, as superintendent, of the whole express business of the three lines of road?

A. Yes, sir.

Q. It was found that that territory was too large for Mr. Trego?

A. Yes, sir.

1415 Q. And he was reduced to the superintendency of the Baltimore & Ohio, and you were put in charge of the Ohio & Mississippi and Marietta?

A. Yes, sir.

Q. Is he, in any sense, your superior officer now?

A. No.

Q. You take no orders from him?

A. No.

Q. You take orders only from the Marietta & Cincinnati, and the Ohio & Mississippi?

A. Yes, sir.

Q. I think you misapprehend the point that I was wishing to reach, though I am glad to have that information. Suppose this long and continuous route which I have spoken of was established as against breaks, however much there may be at the ends of the line, what effect would it have upon rates and transfers, and the dispatch of doing business, and cost; isn't it true that the longer continuous line you can get efficiently worked, no matter how many roads it takes, the cheaper it can be operated?

A. I don't know that, sir; freight and passenger departments of roads are not managed in one continuous way you speak of; different superintendents meet together and make arrangements, of course, for convenience and dispatch of business, regarding competition always as a factor.

Q. Let us see if that is so; if you, as a passenger, are going from here to New York, don't you find it most convenient and satisfactory to be transported in a single car without change?

A. Certainly; but that is done without their being under one control.

Q. You get a through ticket?

A. Without being under one control.

Q. It is also very convenient to be carried through as though it was one line from here to New York?

A. Certainly.

Q. And with one ticket?

A. Certainly.

1416 Q. Is it not also so as to freight?

A. Certainly.

Q. Are not all these fast freight lines constructed upon that theory?

A. Certainly.

Q. They operate over all these roads?

A. Yes, sir.

Q. One company?

A. No.

Q. Take the White Line; there is such a line?

A. Yes, sir.

Q. Blue Line?

A. Blue Line.

Q. The Blue Line is a line which is a unit from here to New York, is it not?

A. I believe so.

Q. It is under one control, isn't it?

A. I believe it is.

Q. Owns its cars?

A. I think so.

Q. And is not broken up into so many divisions as there are railroads over which it passes?

A. That I cannot tell you; I can tell you an Eastern line I do know about. I don't know anything about the White Line. If you say the Continental Line, I can tell you.

Q. How is it organized?

A. The Continental Line is the only fast freight line which I am personally familiar with that carries freight from St. Louis to New York.

Q. In its own cars?

A. Partially in its own cars, or in cars the roads may furnish it; it is not under the control of any one railroad, and there is no such company as the Continental Line Company; but by an agreement with different railroads, connecting with and going between St. Louis and New York, freight is carried very rapidly, without any
1417 break of bulk or connections, and the proceeds divided on the basis of mileage to the companies carrying.

Q. Have they no central set of officers, who control the operation of this organization, which is called the Continental Line?

A. No.

Q. No superintendent?

A. They have one man that acts for all as general manager.

Q. He is the general manager of the Continental Line?

A. Yes, sir.

Q. He works that line over all these roads?

A. Yes, sir.

Q. He collects all moneys?

A. No.

Q. They are collected by some one officer?

A. Yes, sir; not by an officer; they are connected by the initial or delivering line, as may be, and distributed back to the companies.

Q. In other words, the railroads owning the roads have formed an auxiliary organization for their own benefit?

A. Yes, sir.

Q. They operate it as a unit?

A. Yes, sir.

Q. They find they can operate it better that way than operate it separately, these various lines?

A. Certainly.

Q. Why wouldn't that be the case with express companies?

A. I presume it is.

Q. Therefore, it would be better for the Baltimore & Ohio, and the Marietta & Cincinnati, and Ohio & Mississippi, and St. Louis & Iron Mountain, to form a copartnership for the operation of a through express line from Texarkana to New York and Boston and Baltimore; it would be better, if it could be so arranged, for the public, and for the rapidity and cheapness of the service, than to have it done as it is now?

1418 A. It is arranged now.

Q. You understand that the present arrangement is just that?

A. I do; those unite under one control.

Q. It is a partnership of various railroads reaching from Texarkana to New York and Boston for the purpose of conducting an express business, which is a unit under these various names; is that your idea?

A. Very nearly; I don't know what you mean by the term "partnership;" there is no liability on the Iron Mountain for anything lost on the Ohio & Mississippi.

Q. How have you arranged that?

A. We have to pay the Iron Mountain.

Q. How have you arranged that?

A. That is arranged by our agreement and receipts.

Q. You say there is no liability on the part of the Iron Mountain to you?

A. There is certainly for anything lost on the Iron Mountain road.

Q. They have to pay for that?

A. Yes, sir.

Q. Anything lost on your road you have to pay for?

A. Yes, sir.

Q. Then you do issue through bills, do you?

A. Yes, sir.

Q. From here to New York?

A. Yes, sir.

Q. As you are examined as an expert in this matter, I would like to know if this arrangement is at all threatened by any question as to the legality of this method of issuing through bills by the Ohio & Mississippi road; whether the stockholders of your company have ever been consulted as to whether they are willing to become responsible for this sort of thing?

(Counsel for defendant objects, as perfectly incompetent and irrelevant.)

1419 A. The road is in the hands of a receiver; the receiver is acting under the order of court in running an express business.

Q. Your stockholders don't have much to say?

A. Nothing to say about it.

Q. Not been consulted?

A. No.

Q. Let me take the broader basis; you are examined as an expert, as I understand——

WITNESS: I don't profess to be an expert.

Q. Assuming, if you please, you are an expert in this matter; I understand from you, as you have already answered that the continuance of this express business was essential to the business of the community, that it could not be carried on without; now, if it should happen that there is any doubt of the legality of doing such business as you have described by the Baltimore & Ohio Railroad Company, is it not possible that the business may be interrupted by the court, and wouldn't that become a serious question for the community?

(Counsel for defendant objects, as a question of law.)

Q. Wouldn't it be a question the community would be very deeply interested in if it were adjudged that the Baltimore & Ohio railroad had no right to do express business?

A. The Baltimore & Ohio have a clause in their charter enabling them to do express business.

Q. I was not aware of that fact; the Marietta & Cincinnati—how is it as to that?

A. They are working under an order of court.

Q. Then the Iron Mountain, which is neither in the hands of a receiver, nor has any such thing in its charter?

A. I know nothing about that.

1420 Q. Suppose that were the fact, as I claim it to be, I want to know if the public would not be seriously interested in any question which might interrupt that business?

A. They certainly ought to be.

Q. If all the other express facilities were removed and this were found to be illegal?

A. It ought to be a very serious objection to any shipper.

Q. Take another branch of inquiry: What do you consider to be the central idea of the express business; in its sharpest definition, what is the express business as now established in this country?

A. It is additional compensation paid for security and dispatch.

Q. Is it anything more than an arrangement by which all matter needing rapid dispatch or special care can be carried by fast trains over railroad lines?

A. That is the business.

Q. Isn't anything that is brought to the aid of this business accessorial to it?

A. I don't know any more than an engine being accessorial to it.

Q. Nothing more than an engine; not even a car?

A. Without you would call a car, engine, or anything else accessorial to it that brings quickness and safety to its aid.

Q. What is your understanding of the term "accessorial," as apart from any technical usage; what does it mean?

A. My idea of it, of course, given without a great deal of consideration, would be additional or outside service, in addition to the regular service.

Q. Doesn't it mean anything that aids the main object?

A. I should consider that additional to the original service, or outside service; I should consider delivery outside of the term "accessorial service."

1421 Q. Do you think any accessorial service at all is rendered by your express department to shippers?

A. No.

Q. Nothing at all?

A. I do not; we are not paid for it.

Q. Sir?

A. We charge nothing for it.

Q. Do you render it; isn't the presence of a messenger in the car an accessory to the rapid and safe transit of your goods?

A. Yes, sir.

Q. That is one accessory?

A. Yes, sir.

Q. Isn't the use of an iron safe for the stowage of precious articles of small bulk an accessory to their rapid and safe transit?

A. In that sense of the word, yes, sir.

Q. I am trying to relieve courts from the condemnation put upon them by Col. Broadhead, with reference to the use of the word "accessorial service," so that we won't come to lose our respect for them; they have been using that term for thirty years. Isn't the use of a horse and wagon and driver of a wagon accessory to the main object of rapid and safe dispatch of freight?

A. In the same sense a messenger is; yes, sir.

Q. In addition to these things I have mentioned, isn't an office of an express company in a city—a place for the reception of goods, a place for the delivery of goods—an accessory to the main business of rapid and safe transit of such articles as are carried by express?

A. Not any more so than a warehouse.

Q. I didn't ask if it was any "more so;" I ask if it is so; I think a warehouse is an admirable accessory to it.

A. In that sense, I think so.

Q. Don't you render all that accessorial service to all your patrons that I have just stated?

A. Yes, sir.

1422 Q. And does not that cost you—this I have stated—all that you pay out? I have instanced wagons and horses, and their drivers, messengers, safes, offices with their clerks, and all that. Isn't that all, together with the officers who render this service, that your express department of the Ohio & Mississippi pays anything for, absolutely?

A. I don't know whether you mean to be exact or not; there are bridge tolls.

Q. I am speaking now not of the railroad company.

A. The express department pays those bridge tolls—five cents a hundred over the bridge here, and Parkersburg and Louisville.

Q. Is there anything else?

A. I don't recall anything particular.

Q. Transportation is furnished you?

A. Yes, sir.

Q. You don't pay anything for that?

A. No, sir.

Q. The car is furnished; you pay nothing for that?

A. No, sir.

Q. Do I understand you to say, when you sit down to estimate the basis of cost of this express department, that you exclude all this from your estimate of cost, and don't count that in when you go to fix a table of rates?

A. Of course, in making rates they are made to pay.

Q. To pay who?

A. Pay a profit over any cost there may be. The railroad companies furnish the express department with all its accessorial service, as you term it, same as they do the passenger and freight departments.

Q. Don't you keep a regular account of the expenditures of the express department?

A. Certainly.

1423 Q. You pay nothing for transportation; that is furnished by the railroad?

A. Furnished by the railroad.

Q. That don't enter into your account at all?

A. No.

Q. To make it pay, you have to take into consideration all these sources of cost?

A. Yes, sir.

Q. And you make it pay on that basis?

A. Yes, sir.

Q. Do you mean to tell me you deliberately exclude from that basis all cost of wagons, and horses, and harness, and stables, and forage, and drivers; do you exclude them?

A. By no means, because it would be more economical than it would to furnish warehouses and clerks.

Q. Because what would be more economical?

A. Because the wagon service and ridding ourselves of perishable matter incidental——

Mr. Breckinridge: You are going off on a matter I have not asked you about. I asked you whether you didn't include the cost of all these things.

Witness: I said I did.

Q. When you undertake to establish rates that would make this businest pay?

A. Certainly.

Q. Do you exclude from these items of cost the cost of wagons and horses and the cost of drivers?

A. No.

Q. Then your tariff is made with reference to the investment in wagons and horses, etc.?

A. Certainly.

Q. And the cost of maintaining all these?

A. Yes, sir.

Q. Then we are not to understand you charge nothing for the use of these things, are we?

A. I don't think that hardly the way to put it. If we didn't charge for that we would charge for something else which would cost us more.

1424 Q. Which would cost you more?

A. Yes, sir.

Q. Such as what?

A. Such as additional large buildings for warehousing; I would call attention, judge, to the fact that in a shipment of express matter in one car, there are probably ten times as many consignees as there are in a large freight train, and the result would be every one of the consignments would have to have a separate account kept of it, and the matter be put apart in a place where hands can be put upon it at once, or six months afterwards; a large part is perishable matter that has got to be delivered in good order, therefore, as a matter of economy we deliver it—economy in warehouse room, economy in rent, economy in buildings, economy in clerks; and I don't want to be put as saying we do that as an additional cost; it is done as an additional saving.

Q. If I understand, then, when as an express man you sit down to count the cost to which you are to be put, and therefore the basis upon which you must fix a tariff to pay, you mentally consider you have got to choose either between having large warehouses and a greater number of clerks, or what you believe to be the more economical method of having delivery wagons and drivers to take and deliver it?

A. You state it exactly.

Q. You reject the warehouse and additional clerk method as being, in your judgment, less convenient and more costly?

A. Yes, sir.

Q. You adopt the wagon and horse and harness and stable and clerk and the rest of the method of delivery as being the least expensive and the most convenient?

A. You state it better than I could.

Q. Now, then, you choose this as the cheapest mode?

A. Yes, sir.

1425 Q. You don't wish to be understood as saying, when you make your tariff, you exclude the cost of all these horses and wagons, etc.?

A. By no means.

Q. You do include it?

A. I do.

Q. You calculate your tariff on a basis that will make the thing pay on that basis of cost?

A. Yes, sir.

Q. Am I not right, with that explanation, in saying you do charge for the service rendered by wagons, horses, and drivers in taking and delivering freight?

A. Yes, sir; but no extra charge.

Q. Of course you don't charge a man so much for bringing his freight from New York to Cincinnati, and then make an extra charge for delivering it, but you count in the cost of that thing when you undertake to estimate the cost of the entire service?

A. Yes, sir.

Q. And, therefore, you charge for that accessorial service?

A. With other service; yes, sir.

Q. As a part of the entire thing; I supposed that was what you intended to say?

A. That is what I intended to say.

Q. Let me ask you to give the basis of that opinion of yours that the warehouse and additional clerk method would be most expensive?

A. Because a large part of the express matter is perishable, and people would be tardy in calling for it, and it would be a question where it was spoiled, and *and* we would have to pay for it. Then again, as I have said, having to keep an account with each individual consignee, and a place for his package, it would require a great deal of room and a great number of clerks to keep track of it, same as now, we have what we call "old hoss"—uncalled for freight,
that of itself requires one or two men to take care of. If any-
1426 thing was "old hoss," I don't know how many we would have
to have to take care of it.

Q. If you were to dispense with all your horses and wagons and drivers, and all the cost of maintaining all these, you would have to substitute other facilities for them?

A. Yes, sir.

Q. They really have gone into any careful calculation of the expenses?

A. Yes, sir.

Q. You really calculated it?

A. Yes, sir.

Q. You satisfied yourself that the delivery method was the cheapest?

A. Yes, sir.

Q. Cheapest to you, and cheapest to the public?

A. Yes, sir.

Q. You can charge them less, because you have a less investment?

A. Probably.

Q. Speaking again of this accessorial service, have you never purchased, for the express department of your road, any safes?

A. Yes, sir.

Q. Trucks?

A. Yes, sir.

Q. Scales?

A. Yes, sir.

Q. You have purchased them in considerable quantities, have you not?

A. Yes, sir.

Q. I ask this, because, as I understood you, you created on my mind the impression that, at various small stations through the country, you were at little or no expense?

A. Yes; our agents buy them for those places.

Q. It is only when they get to be a little bit larger?

A. Larger towns.

1427 Q. And that process is all the time on the increase; towns are getting larger?

A. Yes, sir.

Q. Again you said, there was less expense on account of having the opportunity to avail yourself of the auditing department of the railroad company; do you mean to say that you have no separate auditing department of the express department of your road?

A. No, sir.

Q. The auditor of the company is also auditor of your express department?

A. Yes, sir.

Q. The meaning of that is, you save the expense of a separate auditor?

A. A separate auditor, and his clerks are sufficient to do the business.

Q. The railroad company to which you all belong has to pay that auditor?

A. Yes, sir; would pay it anyhow.

Q. Whatever increased clerical force he requires, they charge it to your account?

A. Yes, sir.

Q. And no doubt he has had to have it, and has charged it?

A. Yes; it has not been charged in my case.

Q. It certainly cost something?

A. It has not cost our companies, it probably would cost some other company that didn't have sufficient clerical force; we have been fortunate in having enough to do ours and the company's business.

Q. If there were a division of labor that would throw so much on your department, and so much on the railroad generally?

A. Yes, sir.

Q. That has not been done?

A. No.

Q. You don't mean to say it costs nothing?

A. No.

1428 Q. You have been fortunate not to have to pay for it

A. Yes.

Q. I suppose, inasmuch as all the money made goes into the pocket of the railroad, they have not been very nice in making you pay every cent they might require in a just adjustment of the accounts?

A. I don't agree with you there.

Q. You pay nothing for the auditor?

A. No; because there was no additional expense.

Q. If you had paid your portion of that expense it would have added to the expenses of the express business, wouldn't it; the mere fact that they have charged nothing for it does not show that it has cost nothing?

A. No.

Q. Therefore, if the account were fairly distributed part of that would be charged to you?

A. Yes, sir.

Q. Is it not a fact that as all the money earned, net, goes into the pocket of those who own the railroad; that the railroad company has not been very particular in ascertaining the exact cost of that service?

A. I am not willing to admit that; I think they have been very often unjust to me in charging things which ought not to go to my department.

Q. In some things?

A. Yes, sir.

Q. In some things they have charged you nothing?

A. Yes, sir; in other cases they have been more severe to me than they would to an outside company.

Q. Of course you take a pride, a just pride, in making the service of your department as little costly and as efficient as possible?

A. Yes, sir.

Q. Anything that tends to increase that cost is disagreeable to you if you can avoid it?

A. Yes, sir.

1429 Q. Anything that enables you to diminish it gratifies you?

A. Yes, sir.

Q. Don't you save a great deal to your express line of what would be charged to you if there were an exact distribution of charges made?

A. I hardly think I do. I gain perhaps in the auditor's office; I know some items they charge me with more than my proportion. I pay for a messenger who also acts as baggage-master of the company, except between Altamont and Flora, where we have an arrangement with the American Express to divide the expense half and half; it is very unjust to me; I have never been able to get it fixed. I can state other instances where it works unfavorably to the department, being in the family.

Q. I would like for you to state them to me.

A. At different points where we require a night man, the night man acts or operates and I am charged with his salary, because they require an express agent. I ought not to be charged but with a very small proportion.

Q. Even in a happy family?

A. Yes; in the family I think I am charged too much.

Q. Do you pay anything for transportation?

A. We pay the profits for transportation.

Q. You are charged nothing for transportation?

A. Yes, sir.

Q. That is, the chief thing that is done costs you nothing?

A. It costs all there is in it.

Q. When you sit down to calculate the cost at which the express department is conducted, don't you leave out transportation absolutely?

A. Hardly; because we figure on the profits as paying for transportation.

Q. What do you figure as the cost of transportation?

1430 A. Don't figure anything on the cost of transportation?

Q. What do you figure you are paying the railroad company for transportation in making up these accounts to ascertain the profits of the express business?

A. We give them all we make.

Q. Do you calculate it costs the railroad company everything to run your express stock over their line?

A. I don't know that I do; it costs them very little for a baggage car; they would have to pull it anyway.

Q. Isn't that true also of an express company?

A. Yes, sir.

Q. Isn't it true of the Southern Express Company?

A. Yes, sir.

Q. The car has got to go, and if it ain't full it don't add much to its weight for the cost of transportation, as you will see yourself?

A. Yes, sir.

Q. When you say you found, upon examination and comparison, the profits of the Ohio & Mississippi express were three hundred per cent. over the Adams Express Company, I understand you to leave out this item of transportation entirely.

A. I am doing exactly as the Adams Express did, or was done with them; they paid us so much a day, or so much a hundred pounds; the cost of transportation didn't enter into that bargain with them or with us.

Q. Suppose for a moment—what did the Adams Express pay the Ohio & Mississippi for if not for transportation?

A. In that sense of the word, of course they did.

Q. Isn't that the only sense you can use the word in; what did the Adams Express Company pay for if not for transportation?

A. I am talking about the cost; of course they paid for transportation.

1431 Q. What else did they pay them for but transportation?

A. Nothing but transportation.

Q. Absolutely nothing?

A. I say the cost of transportation didn't enter the figures between the Adams Express Company and the railroad company, as far as the railroad company was concerned.

Q. You have stated, when you made a comparison of the cost, you found the Ohio & Mississippi express department was making 300 per cent. over what they had made out of the Adams?

A. Yes, sir.

Q. Still you have not got in your calculation by which you get at 300 per cent. the cost of transportation?

A. Nor did we with the Adams; where they paid $150.00 a day we made $450.00; we made $300 more than the Adams.

Q. You make no calculation in regard to the cost of transportation?

A. In neither case; when I make an estimate of three hundred per cent. there is no cost of transportation made in either case.

Q. Consider for a moment; you have said the Adams Express

Company paid for absolutely nothing but the cost of transportation?

A. Yes, sir.

Q. You have said that in making your calculation of 300 per cent. profit of your express department you found it was 300 per cent. over the Adams?

A. Yes, sir.

Q. You excluded from that calculation all of the cost of transportation?

A. Not any more in one case than the other.

Q. If you are willing to let it rest there I am.

A. I am; Judge, I don't think you understand what I mean; I said the Adams Express paid the Ohio & Mississippi $150.00
1432 a day; that is, for express facilities, including transportation and everything else; it also included a guarantee for losses, if any occurred by employees.

Q. Just a legal obligation?

A. It is a very material thing, and when I base the profits I base them on the $150.00 a day, no matter what, in the estimation of the company, transportation would cost. I base my estimate of profits on the $150.00 that the Adams paid. There is no question of transportation, guarantee, or any other subject, except that $150.00.

Q. In making your estimate of the cost, of the profits of the Ohio & Mississippi Express and the Adams, you reckon nothing for transportation?

A. Nothing for messengers' fare.

Q. You count nothing for anything that the railroad does for them?

A. I based my estimate of profits on what the Adams Express Company paid for the same service.

Q. You make no credit for these things at all, do you?

A. No, sir.

Q. Transportation, or messenger service, or anything?

A. Messenger service is charged to me.

COUNSEL: "Messenger fare," I meant to say.

Q. What was the clerical force in the Ohio & Mississippi Railroad Company before your express department was established?

A. In the auditor's office or the express department?

Q. In the auditor's office, at the time the express department of the Ohio & Mississippi Railroad Company was established, what was the clerical force in the auditor's office?

A. I don't know; I know they had in the auditor's office a small force that examined into and audited the accounts of the Adams Express Company. I understand the same force is employed now.

1433 Q. That was not the question; I don't want what you understand; I want to know your knowledge.

A. I don't know positively.

Q. You can't tell whether it has or has not been increased?

A. I don't know a man in the auditor's office, except the auditor.

Q. You don't have anything to do with that?

A. No, sir.

Q. You have no personal knowledge whether the clerical force has or has not been increased?

A. No; I expect there has been no increase, because none has been charged.

Q. You infer that, because none has been charged?

A. Yes, sir.

Q. Would you infer, because transportation is not charged, that it don't cost anything?

A. I consider I pay very largely for transportation when I give the difference of profits; that is all transportation.

Q. They get it, whatever transportation costs?

A. Yes, sir.

Q. If you earn a dollar you give it to them?

A. Yes, sir.

Q. You give them all you get that you don't have to pay out?

A. Yes, sir.

Q. They can charge it to what they like?

A. Yes, sir.

Q. In point of fact, you don't know what the profits of your express department are?

A. I do not, if you include the cost of transportation charged to the express department.

Q. You are not able to say what the profits of your express department have or have not been, if all the items, such as transportation, are to be included?

A. I don't understand the question altogether.

Q. What I wish to ascertain is this: Whether you have made
1434 such a nice calculation of all the cost, and of all the earnings,
and including the cost of transportation chargeable to your
service, as to be able to say what the actual earnings and net earnings of the department have been?

A. If you will define what you mean by transportation service, I will try to answer.

Q. I mean what the railroad does for you, in hauling cars and furnishing cars which contain your freight and messengers?

A. Messenger fare?

Q. Yes, sir.

A. There was no charge for messenger fare when the Adams had the road, therefore, I make it no part of my calculation; neither do I know what the charge is, or cost is of hauling cars, hauling messengers, wear and tear of steel rails, machinery, etc.; that goes into the transportation department of the railroad.

Q. That forms no part of your calculation?

A. No, sir.

Q. And if it should be included to ascertain the exact cost of your express department service, you are unable to state what that cost is, or what the net earnings have been, if that should be included?

A. Yes, sir.

Q. You say the Adams paid no messenger fare; are you able to say it was not included in the contract price—some charge for messengers?

A. In the contract I think there was no charge for messengers.

Q. The messenger was there?

A. The messenger was there.

Q. And the contract was for the services rendered?

A. Yes, sir.

Q. And the services rendered included the hauling of messengers?

A. Yes, sir; there was no extra charge for messengers?

Q. Can you say that they didn't, as a part of the contract price, pay for that?

1435 A. The per diem covered everything.

Q. Including the cost of hauling messengers?

A. Including the cost of transportation.

Q. Suppose you have a carriage and horse, and drive ten miles in the country, do you mean to say you think that costs you nothing?

A. No.

Q. It does cost you something, does it?

A. Yes, sir.

Q. Inasmuch as they are your carriage and horse you don't care to sit down and find what it costs to use them?

A. Yes, sir.

Q. You pay a certain part of all the actual running expenses?

A. Yes, sir.

Q. You don't say, therefore, that it don't cost anything?

A. No.

Q. But that you don't take the trouble to ascertain how much?

A. Yes, sir.

Q. Isn't that true of the net earnings of your express department?

A. Only partially so; it is only so as far as transportation is concerned. They often charge thing to the express department of our road as express expenses when I think they ought not to be charged.

Q. You have told me you consider rapid dispatch, with safety, on fast trains, as the very center and life of the business?

A. To any express company.

Q. You pay nothing for that?

A. I don't agree with you there.

Q. It don't appear in your accounts?

A. No; but I pay every cent that we earn for transportation, therefore don't keep track of it; I pay everything for transportation.

1436 Q. You have never kept account of what it cost?

A. No, sir.

Q. You don't undertake to say now what it was?

A. No.

Q. You don't know to-day?

A. No.

Q. In no one year do you know what the net earnings have been?

A. We know what we got from the Adams Express.

Q. You got so much per diem?

A. Exactly; we got so much per day, and where we get $3.00 now we got one then; do you understand me?

Q. I understand you perfectly; you spoke of arrangements with the Iron Mountain railroad and Pacific Express; what are those arrangements?

A. They were arrangements for receiving our matter, and receiving from them express matter to be forwarded to its destination at a certain through rate.

Q. Will you please state that rate with the Iron Mountain railroad?

A. It varies as distances.

Q. I was going to add, say from Texarkana to Cincinnati?

A. I don't remember exactly the rate; I will instance: If the rate from St. Louis to Cincinnati was $1.50, and the rate from St. Louis to Texarkana was $3.00, and the through rate being $4.50, we would get $1.50, and the Iron Mountain get $3.00.

Q. Do you bill at one rate from Cincinnati to Texarkana through St. Louis, over the Iron Mountain railroad?

A. Yes.

Q. And have you more than one classification for small packages, or one classification for small packages?

1437 I don't know exactly what you mean by that; there are different classifications; there would be one classification simply to Texarkana from Cincinnati—one classification charge.

Q. The effect of this arrangement with the Iron Mountain road, as I understand you, from Cincinnati to Texarkana, is to make a reduction of the rate charged by both roads for the through bill, is it not?

A. On classification matter it would be a reduction.

Q. Over what would be the local rate from Cincinnati to St. Louis, and St. Louis to Texarkana?

A. It would not be any less except on classification packages, in the case I have spoken of; as a rule it is less than the local.

Q. What proportion?

A. It varies according to the different classifications; some may be a quarter; some, a longer distance, 75 cents; it depends altogether upon the two locals.

Q. I don't ask that; suppose that the Ohio & Mississippi wants to send a package to Galveston, through St. Louis, over the Iron Mountain road, by way of Texarkana, has it an agreed rate with the Iron Mountain, for a reduction of its through rate from its local rate, for that?

A. No; it has not.

Q. Won't there be a practical reduction?

A. There may be; there is none now.

Q. Why none now?

A. Because we have not made up a through tariff with them at all; we have to base everything on the two locals.

Q. You have no through tariff with them yet?

A. No; we use the sum of the two locals.

Q. When you bill to Galveston, how is that; how do you arrive at it?

A. Galveston would be arrived at by adding our local from Cincinnati here to the local from here; that would make the 1438 through rate; after a while it is possible we may get together and make a through rate; but it has not been done yet.

Q. Those arrangements are not, as yet, complete?

A. No.

Q. The practical result now is that you do bill at one rate from Cincinnati to Texarkana, and get a reduction upon the local rate from here to Texarkana?

A. I don't know that.

Q. You don't get any reduction?

A. Not that I know of

Q. By the Iron Mountain?

A. No, sir.

Q. You don't prorate with them?

A. We have not done with them; all I have been furnished with was their local from St. Louis, and on that I went to work; I presume we will.

Q. It is the case with all express companies working in harmony?

A. Yes, sir; they have been changing so much it was no time to make any.

Q. You expect to make such arrangements as will enable you to get a reduction from the local rate from here to Texarkana?

A. That the public will get a reduction.

Q. You will get the reduction; the public will get it from your arrangements in making a through rate?

A. Yes, sir.

Q. If you bill a package of five pounds from Cincinnati to Texarkana, don't you bill it through at one classification?

A. Yes, sir.

Q. Isn't that a reduction from the two local rates?

A. Yes; I stated that to you; I stated that on classification matter there would be a reduction; but on matter not classification matter, there is no reduction.

Q. You mean under one hundred pounds?

A. Yes, sir.

1439 Q. You have an arrangement made by which now, on all matter less than one hundred pounds, that through arrangement is established?

A. Yes, sir.

Q. That you understand to be a less rate than that given to the public for the same class of matter, for the same distance?

A. How?

Q. That is a less rate than is charged by the Iron Mountain for the same class of matter over its road where it originates at St. Louis?

A. I presume so.

Q. Where does your responsiblity, say for the Ohio & Mississippi express department, as you understand it, end for packages which you have billed from Cincinnati over the Iron Mountain road to Texarkana?

A. It ends when we get a receipt from an authorized person of the St. Louis & Iron Mountain Railroad Company.

Q. You look to them for any loss?

A. After that.

Q. Do you protest paper?

A. Yes, sir.

Q. You have no exclusion of that?

A. No, sir.

Q. Under your arrangement with the Iron Mountain, do you take paper at Cincinnati that is necessary to be protested, if not paid, at Texarkana; agree to protest it?

A. We would to points like Texarkana, any large points; small points we would not take it at all.

Q. Suppose the rules of the Iron Mountain express department forbid them to take such paper for such purpose; what would happen?

A. I presume they would not take it from us.

Q. That would interfere with your business?

A. Yes, sir.

1440 Q. And would be one point in which you would not be able to compete satisfactorily with an express company which had no such rule?

A. Yes, sir.

Q. Are you aware that such is the fact by direct orders of the superintendent of the Iron Mountain road?

A. I am not; I have never seen it; if it is, I would like to see it.

Q. I am told it is so. We have examined here several witnesses who seemed to have had a good deal of experience as express men, among others a Mr. Fuller; according to my recollection—I will be glad if Col. Broadhead will correct me if I am wrong—Mr. Fuller expressed the opinion that on short lines of railroad express departments could not operate quite so well as separate express companies; is that your opinion?

Mr. BROADHEAD: I didn't so understand it; he merely said they could not operate as well as on long lines.

Mr. BRECKINRIDGE: Take the question with the doubt whether Mr. Fuller said so, no matter who expressed it.

A. It certainly could not be as profitable; I don't know why they could not do it as well.

Q. If they could not do it as profitably, they could not do it as cheaply.

A. No, sir.

Q. Therefore, in that respect, they could not as conveniently for the public compete with express companies organized like the Adams, running all over?

A. I said no express business can be conducted in a small way as profitably as conducted in a large way.

Q. Therefore, the shorter the line of railroad over which the department is to be operated, the less likelihood there is of satisfactory results?

A. Not altogether.

Q. Somewhat.

1441 A. It would depend on the size of cities; take New York and Philadelphia, probably the most profitable express business done in the United States is done on a road one hundred miles long; I mean a large business must be done.

Q. Speaking of average business how would it be?

A. I don't exactly understand that question; a long line without any large towns would be a much more expensive concern than a short line without any large towns.

Q. I say, take the average terminal points and short lines; is it a fact that the express department of a railroad cannot so cheaply operate that as one express company running all over the line?

A. I suppose so.

Q. You think one express company could do it cheaper?

A. I think so.

Q. Could you give us the average length of road over which that would be the case—leaving out exceptional cases of country very thickly settled, or large terminal points—could you give us the average length of road under which it probably would not be profitable for a railroad express department to operate?

A. I could not; the question is not definite enough.

Q. Would you say one hundred miles would be too short?

A. I could not tell anything about that, the contingencies are too many; I don't think anybody could tell.

Q. You can only say a short line could not operate as profitably as one company operating that and other lines?

A. It would depend so much on circumstances I don't see [how] I could answer the question.

Q. I understood you to say, in answer to Col. Broadhead's question in examination-in-chief, something like this: That, strictly speaking, your companies didn't issue through bills; am I right in that?

A. Will you define what you mean by "strictly speaking?"

1442 Q. I am using your own language; I want you to explain it.

A. For instance, we make a way-bill at Cincinnati, it goes on the Marietta & Cincinnati way-bill; that bill goes through to New York, it passes over the Baltimore & Ohio and Philadelphia & Reading as a freight manifest for a car-load of oats, same way as in the freight department.

Q. I understood you to say, strictly speaking, you didn't issue through bills; please explain what you mean by that—where you make the distinction.

A. I don't think I made that distinction; if I did, I would like to explain it, for I don't understand it.

Q. Can you give me, Mr. Mendenhall, an approximation of the number of miles of railroad in the United States?

A. I could not.

Q. Have you any idea within ten thousand miles of the number?

A. I could not; I have seen many different statements lately.

Q. I suppose it to be over ninety thousand miles of railroad in this country; do you know whether that is an accurate approximation?

A. I should think that was very near it.

Q. Have you any idea over what proportion of these ninety thousand miles of road—if that be accurate—express service is now established?

A. My information would not be accurate enough to be of any service to you.

Q. Can you tell me what proportion, in miles, to that ninety thousand miles—assuming that is correct—the roads which you have mentioned in answer to Col. Broadhead as doing their own express business bear?

A. I don't know the mileage of the Pacific Express, nor of the Iron Mountain.

Q. I ask you if you could tell me what proportion the mileage of the roads you have mentioned as doing their own express business bears to the total mileage?

1443 A. Exactly; and I cannot say.

Q. You speak of the Pacific Express; do you understand that to be an express operated by railroads?

A. Yes, sir.

Q. Don't you know there is a separate organization?

A. Yes; I understood it was similar in form to the Continental Line.

Q. You didn't name the Pacific Express?

A. No; I believe I didn't; I mentioned it as one of the companies we connected with.

Q. Can you tell me what proportion, in miles, the roads you have mentioned as doing their own express business bear to the whole railroad mileage of the country?

A. I cannot.

Q. Is it an exceedingly small proportion?

A. I should think so.

(Counsel for defendant objects to this, as arguing the case before the witness.)

Q. You have no competition at all on the Marietta & Cincinnati railroad?

A. Not on the line; we have at common points.

Q. You have no competition on the Ohio & Mississippi, except where the American Express Company does a little stroke of business?

A. We carry the Adams Express matter from Louisville to St. Louis; you might consider that competition.

Q. You carry the Adams Express?

A. Yes, sir; we don't carry them as an express company.

Q. You carry freight for them?

A. Yes, sir.

Q. It is committed to you as express matter?

A. As between Louisville and St. Louis, both ways.

1444 Q. You have no competition on the line of the Ohio & Mississippi?

A. For express service, no.

Q. You have no competition on the Marietta & Cincinnati railroad?

A. No, sir.

Q. And there is none on the Baltimore & Ohio?

A. None.

Q. What is this arrangement with the American Express, between Altamont and Beardstown?

A. They pay us a per diem for the use of our express cars.

Q. For their freight and express?

A. For their freight and express. That per diem covers transportation of a messenger; there is no charge for carrying him.

Q. What is the per diem, do you remember?

A. Yes, sir; it is twenty dollars a day.

Q. How far distant are those points?

A. About 150 miles.

Q. What is it, a space contract or a pound contract?

A. A space contract.

Q. How much space?

A. I forget exactly—no it is a pound contract—all excess over 8,000 pounds.

Q. They pay you so much a hundred for all over 8,000 pounds?

A. Eight or six.

Q. Is that carried one way or both?

A. Both ways—either way.

Q. They have the right to 8,000 or 6,000 pounds each day?

A. Yes, sir.

Q. Both ways?

A. Yes, sir.

Q. I understand you to say, Mr. Mendenhall, in speaking of this three hundred per cent. of increased receipts by the Ohio & 1445 Mississippi express department, since the establishment of it over the profit got from the Adams Express Company, you, personally, know nothing about that; you get it from the auditor?

A. Seeing the auditor's books.

Q. You have no knowledge, except what you derive from the books?

A. No; that is all.

Q. You found the books in the office and examined them?

A. With the auditor, yes; I saw the contract by which they agreed to pay.

Q. Can you give me any estimate, Mr. Mendenhall, of the cost of your horses, wagons and horses, at Cincinnati, used by the Ohio & Mississippi express department in this service?

A. I cannot give it you now; I didn't come prepared with such figures.

Q. Could you approximate it; for instance, how many horses have you?

A. There are horses at Louisville, horses at Cincinnati, and a joint office here with the Iron Mountain; I could not run over it with any accuracy now; I don't know what they have got here together.

Q. Could you, perhaps, express it in round numbers roughly?

A. I think the stable at Cincinnati, including drivers and everything, cost in the neighborhood of eight hundred dollars a month; in Louisville, in the neighborhood of three hundred and fifty dollars; in St. Louis it varies; I cannot tell.

Q. The arrangements in St. Louis are mutual, are they not?

A. Yes, sir.

Q. You have one office here which accommodates the Iron Mountain, Ohio & Mississippi, and Pacific?

A. Yes, sir.

Q. You divide the expenses?

A. On the amount of business done in dollars and cents; tonnage.

1446 Q. You have one agent that acts for all?

A. That acts for all; the price to the roads is different every month.

Q. Determined on the amount of business done?

A. Yes, sir.

Q. So distributed?

A. Yes, sir.

Q. You have described your relations with the Marietta & Cincinnati road; I mean the Ohio & Mississippi with the Marietta & Cincinnati. I will ask you if you are not establishing as close and similar arrangements between the Ohio & Mississippi and the Iron Mountain as you have with the Marietta & Cincinnati?

A. No; I have nothing to do with the management of the Iron Mountain.

Q. Independent of that, you have nothing to do with the management of the Baltimore & Ohio, have you either?

A. No, sir; you didn't mention the Baltimore & Ohio.

Q. You have very close relations with them?

A. Yes, sir.

Q. It may be I should mention the Baltimore & Ohio; you are seeking to prolong this arrangement, and to make it as much of a unit as possible?

A. Yes, sir.

Q. The more you liken that arrangement to one express company running all over those lines, the greater your success will be, will it not?

A. I think so.

Q. In making an efficient organization to render efficient service?

A. Yes, sir.

Redirect examination by Mr. BROADHEAD:

Q. Judge Breckinridge has just asked you the cost of furnishing wagons, drivers, horses, etc., in Cincinnati, and I think you said about eight hundred dollars a month.

1447 A. That is the cost of the service to us; we don't own horses and wagons anywhere.

Q. That is the whole cost?

A. Yes, sir.

Q. I will ask you whether the cost is not counterbalanced by the increased business caused by it, and the convenience arising from that mode of doing business?

A. I have always said so, I think.

Q. Judge Breckinridge has asked you a good deal about these connecting lines, and questions as to whether it isn't more convenient to have the whole of a line of transportation under one management; I ask you whether, if the whole line between Cincinnati and New York were under one management, express packages could be carried any cheaper or more expeditiously than in the mode in which they are carried now?

A. No, sir.

Q. The same would be true in regard to any extended line of transportation between Cincinnati and Denver, for example?

A. Yes, sir.

Q. You could carry it as cheap by the arrangement made, as if the whole distance were under one management?

A. Yes, sir.

By Mr. Breckinridge: Wouldn't it be somewhat more convenient if it were under one management?

A. I don't see how it can be improved upon any.

Q. You have approximated one management as closely——

Witness: Yes; the idea is to have it work as a solid thing.

Q. The nearer you can have it made to work as a solid thing from end to end, the more satisfactory it will be.

A. Yes; it does not follow that it must be under one management.

1448 Q. I think you said the wagon service was essential?

A. Yes, sir.

Q. Could not get along without it?

A. No, sir.

(Signature waived.)

(The further taking of these depositions was adjourned to 10.30 a. m., to-morrow, April 29, 1881.)

April 29.

The further taking of depositions was, by consent, adjourned to May 5.

May 5.

Parties met, and the cross-examination of Col. E. M. Morsman, by the plaintiff, was completed; which cross-examination will be found elsewhere in connection with Col. Morsman's direct examination.

Adjourned, by consent, until May 6, 1881.

1449 St. Louis, *May* 6, 1881.

Parties met pursuant to adjournment.

J. W. Wallace, being duly sworn, on the part of the defendant testified as follows:

Direct examination by Col. Thoroughman:

Q. You are the auditor of the St. Louis, Iron Mountain & Southern Railway Company?

A. I am.

Q. You are, as such auditor, familiar with its business?

A. In a general way.

Q. Now, tell us where the proceeds go to that arise from the services to the public of the express department of the Iron Mountain & Southern railway; into what fund does the money go?

A. To the general fund deposited with our assistant treasurer here in St. Louis.

Q. And it goes into and is the property of the railroad company?

A. Yes, sir.

Q. State, in a general way, whether the receipts to the railroad company have been greater since the organization of the express department than they were before under the contract with the Southern Express Company.

A. They have been larger.

Q. You have nothing to do with making the freight tariffs of the express department of the railway, have you?

A. Nothing at all.

Q. You don't know what they are or anything about it?

A. No, sir.

1450 Q. Mr. Wallace, can you give me a statement of the expenses of the St. Louis, Iron Mountain & Southern Railway Company, of its express department since it began to carry on its own express business?

A. Yes, sir.

Q. Will you please do it.

A. I will have to refer you to my records; I prepared a statement for Mr. Thoroughman up to some date.

Q. Does any statement appear in the report of the company for the year 1880 of the expenses?

A. In my report to the president it appears; it is not in the printed report, except in a general way, but I made a report in my regular report to the president, which is not published.

Q. Did you furnish to Mr. Clark, the auditor of the express department, a statement of the expenses?

A. I furnished Mr. Thoroughman a statement, which I saw in Mr. Clark's hands afterwards.

Q. Will you look at the Table D, accompanying the report of the president of the St. Louis, Iron Mountain Railway Company for the year 1880, and state who made that statement?

A. It was prepared by me.

Q. For what length of time does the tabulated statement there appearing of expenses for the express department for the year 1880 include?

A. It includes from June to December, inclusive, seven months.

Q. And the expenses are——

A. Forty-six thousand seven hundred and forty-seven dollars and seventy-one cents.

Q. For those months?

A. For those months.

Q. What time did the expenses of the express department of the Iron Mountain & Southern railway commence?

1451 A. As I understand it, June 1st.

Q. So that any expenses incurred in the express department prior to that time are not included in that?

A. Yes; if any had been incurred prior we would have included those; all the expenses of the department from the commencement are included in this up to December 31st.

Q. But you have stated if there were any prior to the first of June, they were not included in that result?

A. I don't want to be so understood, because they are all included; I don't know that any indebtedness was contracted before that date; my understanding is that is the date the company commenced.

Q. Do you know whether the statement of Mr. Clark in reference to the expenses of the express department of the Iron Mountain railroad cover any period of time other than down to the 31st of December?

A. Continuing right along as it is now; my record shows further than that. I know that Mr. Clark's statement of expenses and mine agree, month by month; we check and agree in the expense account, and are obliged to.

Q. If Mr. Clark made a statement of the expenses of $58,000 and odd——

A. If it was correct my books would show the same.

Q. You don't know what length of time that included?

A. I know to December 31st his books were the same as mine—expenses $46,747.71.

Q. So that if he made a statement of $58,000 it included the months subsequent to that date—subsequent to the 31st of December?

A. Yes; by my instructions to keep his accounts open full two weeks after the close of the year, so as to include all the 1880 expenses.

1452 Q. You don't know whether his statement included the months of January and February?

A. What statement?

Q. The statement you spoke of as furnishing him with—you saw in his hands.

A. My recollection is that that statement so made up included January and February, as well as December.

(Signature waived.)

(At this point the further taking of testimony was adjourned to Monday, May 9, 1881.)

1453 St. Louis, *May* 9, 1881.

Parties met pursuant to adjournment, and the further taking of testimony was resumed, as follows:

E. L. Dudley, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Col. Thoroughman:

Q. What relation do you bear to the St. Louis, Iron Mountain & Southern Railway Company?

A. I am assistant general superintendent.

Q. How long have you been connected with the road in all?

A. Nearly fourteen years.

Q. I believe you helped to construct a part of it?

A. Yes, sir.

Q. Are you familiar with the running of the railroad at present?

A. Yes, sir.

Q. I will get you to state if you know anything concerning in a general way the running of the express department of the Iron Mountain railway, and the operations of the express business on the line of that road by the Southern Express Company.

A. Well, I don't understand exactly what you mean.

Q. Whether the road is earning more money under the present arrangement than when the Southern Express Company run on the road?

A. The earnings are greater than when the Southern Express Company run alone.

Q. You are by profession a civil engineer?

A. Yes, sir.

Q. I will get you to state if you have made any computation as to what it costs—I mean as to what the railroad company gets 1454 for carrying a ton of express matter any given number of miles—if you can get that.

A. No, sir.

Q. You could do that by looking at the reports to see what the reports of the gross earnings are, could you not?

A. Well, it would be a matter rather difficult; it would be working things down to a rather fine point to get at the exact cost per ton per mile to haul the express business. When you come to figure the cost on anything there are a great many matters that come into the consideration.

Q. I will get you to state now, in a general way, if it costs more to run a passenger train than a freight train.

A. Certainly.

Q. About what per cent. more does it cost to run a passenger train than a freight train?

A. That I am not prepared to answer; the rapid rate at which a passenger train runs makes it much more expensive, and much harder on the track, and harder to the rolling-stock; then, the train itself, also, is more expensive.

Q. Don't the force required to run—the hands—cost more than a freight train?

A. Yes, sir.

Q. The engines are a better quality, and the cars are more expensive, are they not?

A. Yes, sir.

Q. I will get you to state how many passenger trains were run on the Iron Mountain railroad daily, prior to the 8th day of November, 1880, from here to Texarkana.

A. There was one train a day each way.

Q. Was there an express car attached generally or always to that passenger train?

A. It depends on circumstances; usually an express car was attached—always when necessary.

1455 Q. Have you given any attention as assistant general superintendent of this road, since the organization of the express department, to the service that has been performed by that express department to the public?

A. I haven't paid any special attention to it.

Q. I don't mean that; I wish it in a general way. Have you given general attention and learned the popular feeling in regard to it?

A. I have, and the public are thoroughly satisfied with the service rendered by the Iron Mountain Express Company; I have heard them express that satisfaction at having the Iron Mountain railroad put this express company on as a kind of competition.

Q. I will get you to state whether the service in that line of business, in the express department, to the public is not cheaper now than it was before the railroad company began its first business.

(Objected to, as leading.)

Q. I will get you to state which was the smallest charge to the public, that before the organization of the express department, or that enforced against the public since.

(Objected to, as leading and improper.)

A. Why, the rates are very much cheaper now than they were before.

Q. Mr. Dudley, what is there in the nature of the express business itself that would prevent the Iron Mountain Railroad Company from transacting its express business just as well as any express company in the world?

A. Nothing.

Q. There is nothing in its nature, you say, to prevent?

(Objected to.)

A. No, sir.

Q. Have you any reason at all that you can name why a 1456 railroad company cannot as safely, expeditiously, and as conveniently to the public serve them in the carrying of this express matter as any express company? And, if so, you may tell what that reason is, if you know.

A. I don't know of any reason.

Q. Now, will you speak upon this subject: What facilities the Iron Mountain Railroad Company is now in possession of in the way of horses, agents, houses, stations, safes, etc., to do this express business that they are inviting from the public?

A. We have all the facilities that are necessary; this business is done in good shape.

Q. You say you hear of no complaints and have heard express approbation from the public?

A. Yes, sir.

Q. Would it be worth while to go into this accessorial business with you, as a witness; are you sufficiently familiar with it?

A. No; that is a matter I don't know anything about.

Q. I will get you to state what facilities do you offer, as one of the officers and managers of this road, to the Southern Express Company to do its business; what agencies has it to do this business; whether or not they are not offered the same facilities that the road takes to itself to do its business on the road.

A. They have room in the car—that is allotted—and a place for their messenger, and they pay the same rates that everybody else pays.

Q. Is there any discrimination against them, or is it allowed at your hands at all?

(Objected to, as leading.)

A. There is no discrimination; they pay the rates and take the room; that is all; I don't know of any discrimination.

Q. In the very nature of your office, would you not know if there was any discrimination against them?

(Objected to.)

1457 A. Not necessarily; no.

Q. You would not necessarily know that?

A. No; I don't know anything about their rates; they don't come through my hands at all. As far as the room they have in the cars, those general things I can speak of; as to the room in the train coming and going and the messenger, there is no discrimination against them; but as to the freight list, I don't know anything about that.

Q. The same accommodations you give them for loading and unloading that anybody else has, do you?

A. Just the same.

Q. I suppose you are running the railroad to get what freight to carry you can, are you not?

A. Yes, sir.

Q. Instead of its being displeasing to you for freight to come from the Southern Express Company, you would be glad to get it, would you not?

A. We would be glad to get freight from anybody; money is what we are after.

Q. Now, I will ask you whether you are not familiar with this road from here to its terminus.

A. Yes, sir.

Q. You are acquainted with the country generally, are you not—its productions and settlement?

A. Yes, sir.

Q. State whether the Iron Mountain railroad, just as it is, can afford to carry freight as cheap as a road running through a more productive and more densely populated country, and one that would be a terminus to the East from St. Louis.

(Objected to, as leading and improper.)

A. Certainly not.

Cross-examination by Mr. SHEPLEY:

Q. Do you state that the earnings now from the express business from the Iron Mountain Railway Company are greater than 1458 they were prior to the 18th of November last, when the express department of the Iron Mountain Railway Company was first organized?

A. Yes, sir.

Q. Has not the business of the road generally improved very much since that time?

A. It has, sir.

Q. When you speak of the express business having improved, do you include it in the amount that is collected on the St. Louis, Iron Mountain & Southern railway from the Southern Express Company?

A. From that and from all sources in the express business.

Q. Also from the Southern Express Company?

A. From the Southern Express Company and the express department.

Q. From the express department of the Southern Express Company?

A. Yes, sir.

Q. Then you have for that length of time, from the 8th of November to the present time, the business of two express companies competing with each other for the express business, haven't you?

A. Yes, sir; and doing it at less rates than the other company got before.

Q. So that there is a company in competition for the express business going over that road, besides an additional business, owing to the general business transacted by the road, by the expansion of the lines connected with it?

A. Yes, sir; that is true.

Q. Did you ever make any computation, either from the Iron Mountain railroad company or any other railroad, of what the increased cost of running passenger trains per mile over freight trains was?

A. I never had any occasion to make any comparison, or to make the estimate.

Q. Does not the passenger train per mile consume much less time than the freight train?

A. Yes, sir.

1459 Q. And therefore the cost is diminished to a degree on that account?

A. Why, certainly; the cost and the length of time is less, and the time of the men of course is less, going a stated number of miles; but it is more than compensated for in other ways.

Q. You speak of the patrons along the line having expressed themselves satisfied with the express department of the Iron Mountain Railway Company since it was organized; did the lowering of the charges commence from the time of the organization of the express department of your line?

A. So I understand; yes, sir.

Q. Persons who get their freight carried for less rates are always satisfied, are they?

A. That is very true; but the other company carried them at the same rates that we did; their rates were reduced at the same time from the fact that our company came on and put the rates down.

Q. And that made them satisfied?

A. If they could get the business in as good shape as the others, they of course patronized them, and were satisfied.

Q. They expressed themselves satisfied by reason of the reduction of rates by the express department of the Iron Mountain Railway Company having been organized?

A. Yes, sir.

Q. You say there has been no discrimination of charges on the Iron Mountain railroad as against the express company—no greater charges to them than to other persons?

A. Well, I did not say that, for that is not a matter that came under my supervision in any way, and I don't know anything about it; those rates don't come before me in any way, and it is a matter I don't know anything about.

1460 Q. No such answer could be made, could there, for the reason that there was no competing line with the Southern over the Iron Mountain Railroad Company other than the express department of the road itself, was there?

A. There are only two express companies running over the road.

Q. Only one is there—only one express company?

A. The other is the Iron Mountain Express Company.

Q. This is an express department of the Iron Mountain Railroad Company itself, is it not?

A. Yes, sir.

Q. The railroad itself doing its express business?

A. Yes, sir.

Q. And there is no competing express company over the road, is there?

A. Nothing aside from the department of the Iron Mountain Railroad Company.

Mr. **Thoroughman**: You are speaking now prior to November, 1880?

Mr. **Shepley**: No; I speak of since; what other express company is there running over the St. Louis, Iron Mountain & Southern Railway Company except the Southern Express Company?

A. The express department of the Iron Mountain railroad.

Q. But there is no other express company—no other independent company—is there?

A. There is not.

Q. You run the railroad, as you state, to get the most money for the company?

A. Yes, sir.

Q. And not with particular reference to this man or that man?

A. No, sir.

Q. This company or the other company?

A. No, sir; the object I have in my business is to do the best that is possible for the Iron Mountain Railroad Company.

1461 Q. You said that the St. Louis, Iron Mountain & Southern could not afford to carry freight as cheap over this road as the Eastern roads; what is the reason?

A. The volume of business—the amount of business done; the greater the volume the less the cost per ton per mile; that is a railroad fact.

Q. In making a comparison what rates did you refer to?

A. You can take any line east of here, with their larger business than we have, running through a well-settled country—the Pennsylvania railroad, the New York Central, or the Vandalia line—most any road east of the river here.

Q. Depending, then, upon the volume of the business and the length of the road?

A. Yes, sir.

Mr. **Thoroughman**: There might have been another express company on the Iron Mountain railway doing business without your knowing, I suppose; it would not necessarily come to your knowledge, would it?

A. It has not come to my knowledge, and if so, it is without my knowledge.

(Sigature waived.)

(At this point, by consent, an adjournment was had to May 11, 1881, at 10.30 a. m.)

St. Louis, *May* 11, 1881.

Parties met pursuant to adjournment, when, by consent, a further adjournment was had until to-morrow, May 12th.

1462 St. Louis, *May* 12, 1881.

Parties met pursuant to adjournment, and the further taking of testimony in this case was resumed, as follows:

James Aikin, being duly sworn as a witness on the part of the defendant, testified as follows:

Direct examination by Col. Broadhead:

Q. You have been examined before in this case?
A. Yes, sir; I have.
Q. And you stated what your business was and what official position you held?
A. Yes, sir.

Mr. Glover: It is not necessary for the witness to qualify himself as an expert.

Col. Broadhead: You still occupy the same position in connection with the express department of the Iron Mountain railway?
A. I do.
Q. Something has been said about some change in the tariff charges on the Iron Mountain railroad since the order made by Judge Treat; have you made any changes in those tariff charges?
A. I have in some respects.
Q. In what respect?
A. Decreased them.
Q. Have you increased them in any respect?
A. Not that I am aware of.
Q. What are the charges for kegs of beer taken South on the Iron Mountain railroad since the order of Judge Treat as compared with the rate before?

(Objected to, because the tariffs are in evidence and will speak for themselves.)

A. Previous to that time the rate to De Soto was thirty cents per keg; the charge of ten or twelve——

1463 Mr. Glover: When you say "that time," you mean to refer to Judge Treat's order?

Col. Broadhead: In speaking of Judge Treat's last order, I mean his order early in November; I refer to that when I say Judge Treat's last order.

Witness (continuing): With a charge of ten or twelve for returning the empty kegs. The rate since that is thirty-five cents a keg, and the empties are returned free to Columbus, Kentucky. At that time we were charging sixty-five cents for the keg of beer, and thirty or thirty-five for its return empty. We now charge seventy-five cents for the full keg going to Columbus, and returned empty without charge. So there are other similar cases to points where beer is shipped, and I regard the tariff as reduced instead of being increased on that class of business.
Q. I will ask you, then, to state as an expert, in speaking of the subject of tariffs, whether the tariff charges of the express department of the Iron Mountain Railroad Company are reasonable charges?
A. In my judgment, it is a reasonable tariff.

Q. As compared with the charges of other express companies, how does it stand?

A. From my knowledge of express tariffs and my acquaintance with the business, I judge that the tariff is a reasonable one; yes, sir.

Q. What knowledge have you on that subject—how long experience?

A. Well, that has been answered before; I have been in the business about twenty years.

Q. Have you made any comparison between the charges—the present charges of the express department of the Iron Mountain Railway Company, and the charges made by the Southern Express Company prior to the recision of the contract between the parties?

(Objected to, as incompetent and irrelevant.)

1464 A. I have, as far as their tariff extended or applied to the Iron Mountain Railroad Company and the Memphis & Little Rock road.

Q. Have you examined their tariff of charges as it existed before the recision of the contract?

A. Yes, sir; I have.

(Defendant's attorney hands to the witness a paper memorandum, marked "Exhibit A to James Aikin's deposition, May 11, 1881," and asks him to state what it is.)

WITNESS: This is a paper containing or stating the tariff of rates on one hundred packages, varying in weight from one to one hundred pounds, between St. Louis and Little Rock, and between St. Louis and Texarkana, and has the charges on each package under the old schedule of rates of the Southern Express Company, previous to the organization of the express department of the Iron Mountain railroad, and the charges on the same package under the tariff of the express department of the Iron Mountain railway, and the result is as shown by the paper—the total weight of one hundred packages is 5,050 pounds.

Q. Between what points?

A. Between St. Louis and Little Rock, varying in weight from one to one hundred pounds, and the tariff of the Southern Express Company, which was in existence at the time this department was organized, on those one hundred packages, would be $144.75. Under the tariff of the Iron Mountain Railway Company, $109.05, on one hundred similar packages between St. Louis and Texarkana—the weight the same of course; and the charges under the Southern Express Company on that one hundred packages from St. Louis to Texarkana, or from Texarkana to St. Louis, under their old tariff, was $203.50, under the schedule of rates of the department of this road, $140.60; and, judging by that, I regard this as a reasonable tariff, certainly. That is not the only reason of my regarding it as a reasonable tariff, our present tariff, as compared with
1465 the rates of other express companies for similar distances.

Q. How is the business of the express department now progressing of the Iron Mountain railroad?

A. We are doing a good business; continually increasing.

Q. And at the rates such as you have spoken of in that paper?

A. Yes, sir.

Q. The Iron Mountain express department collects its packages with horses and wagons as other express companies, does it not?

A. We do in St. Louis, Little Rock, and Texarkana.

Q. Does the express department of the Iron Mountain Railway Company charge anything for collecting its packages?

A. Our tariff is not based on a charge for that service.

Q. I have asked these questions with a view of asking this question: If you collect for the Iron Mountain express department a package from any given point in St. Louis, to be transported to Little Rock, over the Iron Mountain railroad, of a given weight, say, fifty pounds weight, and the Southern Express Company receives a package at the same place, of the same weight, to be transported to Texarkana, in your charges against the Southern Express Company is any allowance made for the cost and expense of collecting that package to the Southern Express Company?

A. There is no allowance made for any service that they perform of that character, for the reason that it is in no way any advantage to us, and it don't save us any expense.

Q. Why is no deduction or allowance made so the Southern Express Company upon such package under such circumstances?

1466 A. It is no advantage to us to have them perform that service. It is no saving. I regard their performing that service as detrimental to us, and for this reason: They send their teams about among the shippers here in St. Louis, representing that they are operating the express on the Iron Mountain railway, and collect and receive packages under that representation, and when in their possession they divert them from that road and send them by a more circuitous route to the destination, and the Iron Mountain railway has no benefit for the transportation of the express matter that it is legitimately entitled to. For instance, if there is a package here in St. Louis destined to some point in Southern Texas, the shipper, as every other shipper does when he sends by express, expects that it will reach destination by the quickest route, and he knows that the quickest route to destination is by the Iron Mountain railroad. The Southern Express Company will represent to him that they operate the Iron Mountain railroad, and he gives it to them, and it will be sent to destination by the way of the Cairo & Mississippi Central railroad to New Orleans and back to Galveston, and then perhaps to some point north of Galveston into the interior of Texas, or be sent by the M., K. & T. to Dallas, and then east and southeast, to the detriment of the shipper and to the detriment of our road. In fact, I have been told by the——

(Counsel for the plaintiff objected, as hearsay.)

Q. You need not state what others have told you, unless it came from some agent or officer of the Southern Express Company.

A. I was going to remark, Mr. Campbell, the superintendent of the Texas Express Company, and Mr. Fisher, superintendent of the Southern Express Company, have both told me that any express matter that the Southern Express Company could get to destination by any other route was diverted from the Iron Mountain railroad, and, telling me that, said that it would be advantageous to the Iron
Mountain railroad to conduct the business on terms more
1467 favorable to them, and secure over its route the freight that
they were diverting from it.

Q. Supposing, however, in the case mentioned the express matter does in fact go over the Iron Mountain railroad, being handled by the Southern Express Company, instead of going by one of the other circuitous routes that you have spoken of; then why is it that no allowance is made to the Southern Express Company?

A. It is as much work for this department to get an accurate account of the shipments made by the Southern Express Company as it is the shipments made by anybody else. They are way-billed the same; charges collected are accounted for in the same manner; that is, freight is all scripped or billed. We have our own methods of collecting this freight, which we could do without any additional expenditure. Our agents at local points on the Iron Mountain railroad are paid just as much proportionately for securing an accurate account of the shipments of the Southern Express Company as they are for the shipments of anybody else, and my experience of a year teaches me that we could do this business with less annoyance in a legitimate way than we can in the way we are forced to do it to get an account of this business. To illustrate, at a point near Little Rock the Little Rock & Fort Smith railway intersects the Iron Mountain railroad; heavy freights are transferred there, sometimes fruit; the Southern Express Company have made transfers there that they failed to give any account of; I call to mind now one instance, of fifty or sixty crates of peaches, about a year ago, during the peach season—perhaps not quite a year ago.

Q. Last fall, was it not?

A. Well, yes; it was during the peach season last summer; two or three cases have come to my knowledge in which they have shipped beer from Carondelet, and there was a case occurred here where there was an evident disposition——

1468 Mr. Glover: Don't speak of an evident disposition; speak of facts.

A. Well, wait one minute, and I will change the phraseology of that; my experience in the management of this business has taught me, and I have learned the fact.

(Counsel for plaintiff objected, because we want facts, and not general experience.)

Witness: I don't want to state this thing in a way that is not proper and legal—that it is more work and more annoyance to secure an accurate list of the shipments made by it than if those shipments were made by the public as other shipments are; I cannot see in any point where it is in any manner advantageous to us, or saves a dollar in money to this department.

Q. Well, in the case mentioned, suppose that instead of a package being taken to the Iron Mountain railway for transportation by the Southern Express Company, it was taken there by the shipper himself; do you make any allowance to the shipper for the trouble and expense of bringing it?

A. We do not.

Q. From your experience in the management of express business, is it customary to make any such charges against the shippers by the express companies?

A. I never heard of such a charge being made; now we are receiving fruit for shipment at a place called Ward's station, on the Iron Mountain railroad, where we have no office, no agent; the shippers bring this fruit to the trains themselves and put it on, and we make the same charge to St. Louis that we do for points situated in the same locality where we have an agent, and go through the regular form of shipment; and our tariff between the two points, where there is no delivery or collection of the package by team at either end, is as much for the same distance carried as it is between the points where we perform the service. The service, as far
1469 as connected with our business here, or our business at Little Rock, I regard as a convenience to the express company fully as much as it is a convenience to the public.

Q. How is it a convenience to the express company, to the Southern Express Company?

A. Well, to illustrate that, this morning we had about——

Mr. Glover: You are arguing this case, are you not?

Witness: No, sir; this morning we had about eight hundred crates of strawberries here; well, it was a relief for us to have the privilege of taking them in the wagon and delivering them at the store of the consignee. We had no place to store them; if we took them to the office, the labor of putting them in store and the expense and annoyance is more, a good deal, than the trouble of delivering them to the consignee. In some cases the consignees prefer to do this business themselves; they are at the train on the arrival and take a goodly portion of these fruit shipments themselves, and they regard it as a privilege to do it, as we regard it a privilege to deliver it to them, instead of being forced to put it in a warehouse and take care of it.

Q. That would apply to a large class of matter sent by express?

A. It would to a large class; not all.

Q. What do expressmen mean by insurance when they talk about insurance on articles and a charge for insurance?

(Objected to, as calling for an opinion of the witness.)

Q. I will change the question in this way: Mr. Albright, in his testimony for the plaintiff in this case, states that the Southern Express Company would insure, in some instances did; that they

insured when requested by shippers, and that their charge
1470 was one-eighth of one per cent.; is your company in the
habit of insuring in that way?

A. We would, if requested to do it, for an additional compensation.

Q. How is the rate or tariff of charges fixed on articles of value?

A. The tariff upon merchandise or upon shipments generally is based upon the weight. If the shipment is of excessive value, and the shipper desires us to be responsible for that value, we charge additional to the ordinary merchandise rate.

Q. In proportion to what?

A. Why, the greater the value the greater the charge.

Q. In proportion to the value of the article?

A. Yes; I have forgotten the precise charge.

Q. And it would be on that basis that you would insure, if required?

A. Yes, sir; as I understand the matter of insurance, goods in transit are liable to loss in a manner that the express company is not responsible for. There might be losses in case of insurrections or riots; when goods are insured they are insured to cover losses of that character.

Cross-examination by Mr. Glover:

Q. Have you intended, in your examination here to-day, to say that your charges for carrying freight, which have been in use by the express department of the Iron Mountain railroad, have been any other than those indicated by your published tariff rates, which have been put in evidence in this case?

A. They are different.

Q. In what respect?

A. We have a rate on fruit less—that includes berries—than that indicated in the tariff. We return empty beer kegs free, which is
not stated in the tariff. We return empty egg crates free,
1471 which is not stated in the tariff. We return empty chicken-
coops free, which is not stated in the tariff, and we return
empty meat boxes free, which is not stated in the tariff. We return empty soda-water crates free, which is not stated in the tariff.

Q. Isn't it a fact that you began to return those boxes or packages, kegs, etc., which were empty, after you had been ordered by Judge Treat's last order to do so, and had you not charged the Southern Express Company before that order for returning empty packages, kegs, etc.?

A. I never understood that Judge Treat ordered us to return anything.

Q. That is not the question—but whether after that time you did not begin to return them free, and before that time you had charged the Southern Express Company?

A. We commenced to return them free after that time—after the order.

Q. And before you had charged for returning empty packages?

A. We had; and charged some others, too.

Q. How did you obtain that Exhibit A, to your examination today—who made that paper?

A. It was made at my direction.

Q. Who made it—who did the clerical work?

A. I did the work, but the clerical work was done by Mr. Wood, a clerk of mine.

Q. How did you make it up?

A. I made it up from the tariff of the Iron Mountain railway express department and the classification tariff of the Southern Express Company.

Q. Where did you get that tariff of the Southern Express Company?

A. I can't tell you now.

Q. How do you know it is a tariff of the Southern Express Company?

A. It says so on its face.

Q. Do you know anything else?

1472 A. Anything else about what?

Q. Anything else tending to show that this is the true tariff of the Southern Express Company.

A. Perhaps I can think where I got that in a moment.

Q. That is what I asked you before, where you got it?

A. I can't tell you where I got it now.

Q. Then this paper, Exhibit A, is not an original document issued by the express department of the Iron Mountain & Southern railway, or an original document issued by the Southern Express Company?

A. It is not.

Q. But it is a compilation which you have made from these two papers?

A. Yes, sir.

Q. You have put down there on that paper what you understood to be the charges of the Southern Express Company, taken from the paper to which you have referred?

A. Yes, sir.

Q. And as to the genuineness of which paper you have no knowledge?

A. No, sir; excepting that it was headed "Southern Express Company," and issued in their form of circular to agents as such sheets are issued.

Q. Do you know it is issued by them?

A. I do not; I did not see it issued; no, sir.

Q. You took out, you say, one hundred packages as samples?

A. I made a list of a hundred packages; yes, sir.

Q. Did you take the first that came, or did you select that list, collate it, and calculate it?

A. I give the charges on one hundred packages, ranging in weight from one to one hundred pounds, inclusive.

Q. Do you know the contents of the package?

A. No, sir; as ordinary merchandise, it was not taken from
1473 the packages; it shows what the charges of each would have

been on one hundred packages of that weight, ordinary packages, of the weight represented in the compilation.

Q. Do you know what kind of goods were contained in those one hundred packages?

A. No, sir.

Q. You make no charge for collecting about the city express matter which your express department carries?

A. We carry for the same where a man brings it to the office that we do where we collect it.

Q. Do you mean to say that it don't cost you anything to collect about the city of St. Louis, or any other city, the express matter which is transported upon the St. Louis, Iron Mountain & Southern railway?

A. I do not.

Q. It does cost you something to do it?

A. Of course it does.

Q. You say you don't allow the Southern Express Company anything for the work they do in bringing express matter to your train, because it is of no advantage to you for them to do it?

A. I wish to be understood that the work they do in this is of no advantage to us, no saving to us.

Q. Does the work that they do cost you anything—the work that they do in bringing the express matter to be carried over your road to the train—does the work that the Southern Express Company does in bringing express matter to your train cost you anything?

A. We have to do work in connection with that matter.

Q. Does it cost you anything?

A. Indirectly, it does.

Q. How?

A. In the way I have explained before; they, taking advantage of this service to divert business from the Iron Mountain rail-
1474 road, and that is done at the expense of the road, and costs the road something.

Q. We will come to that directly; that is another part of the subject.

A. But if you mean that their carrying a package to the depot costs us an outlay of money, I say no.

Q. But if you carried that package from your express office to the depot, you have said that it would cost you something to do it.

A. I say that that package would not cost us anything additional to what it costs now; I say to the best of my judgment.

Q. I don't ask about additional; I wish to know if it costs you anything?

A. It costs us something to carry what we do carry.

Q. Well, that is the question; you answered that it does cost you when you haul packages from your express office to your train something; is that so?

A. Yes, sir; I have answered.

Q. Now, if the Southern Express Company hauled the same kind of package from its office adjoining yours to the depot, you wouldn't pay them anything for that?

A. No; I wouldn't pay anybody.

Q. Nor would that hauling cost you anything?

A. We don't pay anything for that.

Q. You don't answer the question; I know you don't pay anybody else.

A. You asked me if we pay them; I say we don't pay them.

Q. Well, that is an answer to the question; it is not necessary to say that you don't pay anybody else. Now, I understand you to say you know the Southern Express Company has had freights delivered to it for the purpose of being transported over your road, and that it did not transport it over your road, but trans-
1475 ported it over the Cairo Short Line, or some other road—the Missouri, Kansas & Texas—do you say that?

A. I did not intend to say it.

Q. Then you don't know of any instance where any freight has been delivered to the Southern Express Company for carriage over your road, which that company has diverted from your road; you know of no such case?

A. I explained that matter in my direct examination.

Q. Now, you go on talking about something else; I wish to know if you know of such a case; you say you have heard; I wish to know what you know.

A. In the month of February I was at Palestine, Texas, in the office of the Texas Express Company, and I was shown a package, the address of which I can't remember now, there, that the agent said——

(Objected to.)

Q. Omit that and just tell what you know?

A. It had on it a label of the Texas Express Company, from New Orleans.

Q. The agent said that?

A. I saw that; now, I didn't see this package in transit, but he called my attention to it.

Q. Now, stop; we don't want to know what he called your attention to; you know that is not testimony; what you know about it, not what he told you?

A. Well, I cannot; as I said before, I cannot say of my own personal knowledge; I didn't see that package in transit, this roundabout way; I saw on it a label of the Southern Express Company at St. Louis, and a label of the Texas Express Company at New Orleans. This is my recollection, and that I regarded it as evidence that——

Mr. Glover: We object, we don't care what you thought, state the facts and the court will judge.

A. Of my personal knowledge of the actual transit of this by any other road I have none.

1476 A. I don't ask that; but do you know any case, first where freight was delivered to the Southern Express to go over your road and they didn't send it over your road?

A. I say, of my own personal knowledge and observation, I do not.

Q. Well, nobody has asked you about anything else?

A. Certainly not. All I know is what their officers and agents have told me in regard to that matter. I have not spent any time in chasing this package around.

Q. What do you say Mr. Kimball and Fisher told you?

A. Mr. Kimball told me that any freight the Southern Express Company could get to destination by any other route they did not send by the Iron Mountain railroad. Mr. Fisher told me that it would be advantageous to the Iron Mountain road to concede the Southern Express Company better terms, because they would then receive a great deal more freight; that they didn't use that to get to destination when they could get——

Q. That is not the question.

Witness: You asked what they told me, and I answered.

Q. On a certain subject. Now, did either of them tell you that they had received any freight for transportation over your road and did not send it over your road?

A. I never heard them say they received a pound of freight to be transported over our road.

Q. Well, that is an answer to the question.

Witness: I did hear them say that that was the direct route over our road; that they didn't send that way——

Q. Did they agree to send that way?

A. No, sir.

1477 Q. Then what do you go into this other subject for? Have you as a public carrier—I mean the express department of the Iron Mountain Railway Company—been interesting yourself, or do you know of any officer of your railway company that has interested himself, to throw any business into the hands of the Southern Express Company?

A. I do not.

Q. Why do you expect the Southern Express Company to favor you——

A. I don't expect it.

Q. Why do you say that they divert freight from your road, and complain of it then?

A. Because I have reason to think they do.

Q. But why do you complain of it, when you try to divert freight from them?

A. Because it is detrimental to the shipper and detrimental to the interests of this road.

Q. You are not on the subject now; you are talking of another subject.

A. No; you asked why I said this, and I say because it is detrimental to the interests of the road to have them divert freight from it.

Q. Do you understand that anybody has any rights at all that that don't begin and end in the interests of your road?

A. I do; yes, sir.

Q. Do you concede, then, the Southern Express Company has a right, when any freights are offered to it for transportation, to persuade or influence the owner of the freight to send it by the Cairo Short Line, in place of your road?

A. I do.

Q. Then you don't complain of it?

A. I don't make any complaint of it whatever.

Q. When you say that it is injurious to you for the Southern Express Company to handle freights that go over your road, don't you mean simply that you would like to do all the business yourself?

1478 A. Well, when I say injurious to me, I don't mean to me personally.

Q. I know that.

A. When they handle freights that go over our road it is not to our detriment at all.

Q. Ah! Is it to your advantage?

A. No; not at all to our advantage or detriment.

Q. Why did you put them off your road then?

A. Why what?

Q. Why did you put them off your road?

A. I never understood that they had been put off the road.

Q. You never understood that?

A. I never knew that they had been put off the road.

Q. What did you mean by saying when you did your business in a legitimate way it was the better for you; what did you mean by that?

A. I mean that we can handle all the shipments that are made over our road with as little expense to this department as we are now obliged to incur to properly transact the business; I meant to be understood that the service rendered by the Southern Express Company was of a character, in its nature and results, that did not benefit or net this department anything.

Q. What did you mean when you said it was a great annoyance to you not to be able to procure a list of articles shipped by the Southern Express Company over your road?

A. I did not mean to say what you intimate I did say.

Q. Well, what did you say?

A. With reference to what?

Q. With reference to your annoyance about a list; you know better than I do what you mean; I gave you those words—what you said.

1479 A. To illustrate what I meant: The public get their business ready for shipment; where we have facilities for taking an account of it, we get it ready in time to take the train; with the Southern Express Company we are not as exacting as we are with the public. We suffer their matter to go to the train up to the minute, and sometimes after it starts. We grant them, in the transaction of this business, favors that we do not anybody else, and I mean to say that if they were subjected to the same rules that everybody else is in the transaction of the business with the public that it would be easier, that it would be pleasanter, and, I think, more economical than the methods we are forced to adopt in doing it now.

Q. I really don't understand you; I would like to know what you mean by saying you extend courtesies and facilities to the Southern Express Company which you do not extend to anybody else, because of the methods which you are forced to adopt?

A. Did I say forced to adopt? I don't want to be understood that I used the term "forced" in an arbitrary way; that is not what I mean in using the term "force;" I use it in this sense: that I feel that I want to put as little hindrance in the way as possible in the transaction of their business, and I feel it sort of obligatory upon me to grant them favors in the transaction of the business that we never have extended to the public generally, and I use the word "forced" in that sense.

Q. You say you won't allow the Southern Express Company, as a common carrier, any charges for bringing freights to your trains; you never have and never will?

A. We never have; I can't tell what we will do in the future, judge.

Q. Didn't you say you never would?

A. I didn't intend to say so.

Q. Now, do you treat any other common carrier in that way?

A. Yes, sir.

1480 Q. If a package is consigned to you—a package that comes over the railroad from the city of Keokuk comes down here to St. Louis, and is transferred to your express department upon the Iron Mountain railway, do you refuse to recognize the back charges?

A. Oh, no.

Q. Why do you recognize the back charges of the previous carrier?

A. Because it is customary among forwarding common carriers to do it. We do it with the Southern Express Company as well as the American and United States.

Q. Did I understand you to say that if the Southern Express Company, as a common carrier, receives freight at the town of Bremen here and hauls it four miles to your depot, as a common carrier, that you will not recognize their charge?

A. If they wanted us to pay the accumulated charges on it we would do it always.

Q. Do they ask you any more when they want pay for their accessorial service?

A. It is of a different character.

Q. Is the Southern Express Company a common carrier; do you understand it is a common carrier as much as you are?

A. I should think it was; yes.

Q. Why do you distinguish between it and a steamboat line or any railroad line?

A. We do not.

Q. You do not?

A. No, sir; if the Southern Express Company wishes us to advance anything on a package they offer for shipment we are always ready to do it, and have whenever they have asked us, and they have asked it repeatedly since we have been working on this road.

Q. Have you meant to say that your express department of the St. Louis, Iron Mountain & Southern Railway Company have, in their carrying contracts, used any other form of carrying contract than those that were put in evidence by you or by Col. Soper, 1481 I forget which. Let me explain; early in this case, I, acting as the examiner for the plaintiff, called for all forms of contract used by the Iron Mountain express department—common freight—express freight forms of contract, with contents limited to $50.00; forms of contract that expressed the value of the package upon its face; forms which said "value not given," and "no liability over $50.00." Now, either you, if I recollect right, or Col. Soper, gave the plaintiff all these forms of contract—forms where the liability was limited to $50.00, and forms where you were insurers, according to the terms of the contract, for safe delivery and in good order. Now, what I wish to ask is, when Col. Broadhead questioned you about insurance, if you meant to state that your express department of the Iron Mountain railroad has used any other form of contract than those which were put in evidence and which were represented to be all the forms of contract that you have?

A. I don't know that we have; I don't think we have.

Q. When you talk about insurance, then, you mean according to some form of contract in evidence?

A. I mean we would insure if anybody asked us to insure.

Q. What do charge them?

A. I should charge them in proportion to the distance and the risk incurred.

Q. Of course; now, how much?

A. I can't tell exactly now.

Q. Would it exceed one-eighth of one per cent.?

A. It might for some distances; but I have no recollection of ever being called on to insure the transit of a package.

(Signature waived.)

(At this point the further hearing in this cause was adjourned until 10 o'clock to-morrow, May 12, 1881.)

1482 ST. LOUIS, *May* 12, 1881.

Parties met pursuant to adjournment.

A. A. TALMAGE, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Col. BROADHEAD:

Q. What is your business, Mr. Talmage?

A. General manager of the Missouri Pacific railway and lines operated by it.

Q. How long have you been connected with the Missouri Pacific railroad?

A. About ten years.

Q. Are you an engineer by profession?

A. A civil engineer, no, sir; I am not.

Q. How long have you been in the railroad business proper?

A. In the railroad business about twenty-seven years.

Q. Will you please name the roads that you have been on and in what capacity you have acted upon them?

A. I was first in the Erie railway, in the transportation department, connected with the receiving and forwarding of freight; from there I came to Chicago, and entered the service of the Michigan Southern, now known as the Lake Shore & Michigan Southern; I remained with that company until the summer of 1858; was first in charge of the receiving and delivery of freight at Chicago—that was in 1853; then, afterwards, I went to the Eastern terminus of the road, on Lake Erie, and had charge of the receiving and forwarding of all lake freight by steamers and vessels; afterwards I went to Toledo, and was train master there, and had charge of all trains and train men arriving and departing at Toledo station; then, in
1483 August, 1858, I came to St. Louis, and entered the service of the Terre Haute & Alton road as conductor of a passenger train. Early in 1864 I was appointed assistant superintendent of that road; in September, 1864, I was offered a position on the military roads, and was sent to Atlanta as master of transportation; in November of the same year I was made superintendent of all lines of military roads East and South of Chattanooga, and remained on them until the close of the war, and then managed the East Tennessee & Georgia railroad for some months after it was turned over to the civil authorities; in the fall of 1867 I returned to St. Louis and took the position of assistant superintendent on what is now known as the Indianapolis & St. Louis—was formerly the Terre Haute & Alton road—was made general superintendent of that road; in 1870 was offered the position of general superintendent of the Atlantic & Pacific, and accepted it in March, 1871; took charge of the Missouri Pacific in December of the same year, and since that time, with the exception of a few months in the summer of 1876, I have had charge of the Missouri Pacific railroad and the lines operated by it.

Q. You have had to do with the freight business part of the time you have been in the railroad service?

A. Yes, sir.

Q. What is express freight, and your designation of it; what character of freight is that?

A. Express freight and express business is a class of freight; package and parcel business that is carried on passenger trains, light freight, usually—light and valuable freight.

Q. Requiring rapid transportation?

A. Requiring rapid transportation and more than ordinary care.

Q. I will get you to state your opinion, Mr. Talmage, as to whether a railroad can do an express business—its own express business

1484 A. I know of no reason why a railroad company cannot do an express freight business better than any one else.

Q. Have any of the roads with which you have been connected done their own express business?

A. Yes, sir; it has been done in both ways by express companies and also by the railroad companies on lines that have been under my charge; I consider the railroad company is in a better position to do this class of business than a separate organization; we have all our own agents to attend to other duties at stations, who can just as well take charge of the express business as the ordinary heavy freights that go by freight trains.

Q. How about forwarding express matter that goes over the line of a given railroad?

A. There is no reason why the freight business—express matter handled by a railroad company cannot be delivered as promptly and forwarded as well by connecting lines as by a separate organization.

Q. What lines of road do you allude to when you say you have been connected with those that have done their own express business?

A. We run the express business since I have had charge of the M., K. & T. road as a department of our line, the same as the general freight agent manages the heavier freights that go by freight trains.

Q. Is the express business on the M., K. & T. road being done in that way now, at this time?

A. Not at present.

Q. That is one of the roads that you have under your charge as superintendent?

A. Yes, sir.

Q. And that road runs between what points?

A. Between Hannibal and Denison, Texas, and from Denison to Greenville and Gainesville and Fort Worth, now, with a branch from Parsons to Junction City, Kansas.

1485 Q. Mr. Talmage, have you ever made it your business to inquire into the cost, or the difference in the cost of operating a passenger train and a freight train proper.

A. Yes, sir.

Q. Which is the most expensive in its operation?

A. A passenger train, owing to the increased speed at which it is run, and to the better class of equipment that is required for that service.

Q. Are you acquainted with the line of the Iron Mountain railroad running between St. Louis and Texarkana?

A. Yes, sir; somewhat.

Q. You have been over the line, have you?

A. Yes, sir.

Q. What character of country, in regard to the matter of local freight, does that line run over; what I mean by local freights is any freight that is taken between intermediate points, or that is taken from intermediate points to either terminus of the road?

A. Between intermediate points or from intermediate points to the termini?

Q. Yes.

A. That is correct; that is local freight. Nothing can be classed as through freight except what passes from one terminus to another.

Q. Now, please answer the question that I have asked; what character of country, in regard to the matter of local freight, does that line run over?

A. As far as I have been able to observe in passing over the Iron Mountain railroad, I should say that a portion of the line must have a pretty good local business, other portions of it I should think the local business would be light, I mean in connection with this class of business—express business I mean.

Q. What are the elements that go to constitute freight charges over lines of particular road; how are their tariff table, made, in regard to charges under what circumstances?

A. Well, they are based to a great extent on distances, and
1486 on the nature of the article to be transported, the risk that is
to be run, the value of the freight, all those things have a bearing in making up the tariffs. Tariffs are scaled, and the valuable freights are rated in the higher classes whereas the coarser go in the lower; and the quantities also have some bearing.

Q. What has the volume of business to do with it?

A. The volume of business, also the quantity, reduces the cost usually.

Q. Can a railroad running through a sparsely-settled region of country afford to do business as cheaply as one running through a densely populated region of country?

A. They cannot.

Q. And the reason why?

A. No more than a merchant can afford to sell a small quantity of goods at a small margin of profit so well as he can a large quantity at a small profit. The fixed charges on a railroad are made for certain heads of departments, and their organization is just as great for doing a light business as it is for doing a heavy one.

Mr. GLOVER: The cost is the same to run empties as——

WITNESS: Not exactly.

Col. BROADHEAD: How is it in regard to the territory over which the Iron Mountain railroad runs?

A. As I said before, there is a portion of the line that is unsettled and must necessarily have a light business.

Q. How does it compare with the St. Louis, Indianapolis & Vandalia line, and the lines running east from here?

A. For local business it is nothing like as good—has not the population to the square mile.

Q. You have never, yourself, been engaged in the express business directly?

A. No, sir.

1487 Q. Has it been within the line of your duty to superintend the express department of any railroad?

A. No, sir; not directly.

Cross-examination by Mr. GLOVER:

Q. You remarked, in reply to Col. Broadhead, that you knew of no reason why a railroad could not conduct an express business for itself, as well as any express company; did you mean by that that you did not know of any reason why it could not so conduct an express business in some respects, or did you mean in all respects?

A. I meant in all respects, sir.

Q. Is not the general express business of the country conducted oftentimes at a distance from railroad lines—railroad stations?

A. Not to any great extent; there are a few lines—a few organizations, I think, that do business with stage lines; but I don't think the express companies run to any extent off from the principal line of travel by rail or steamboat.

Q. Take the city of St. Louis, does not the Southern Express Company, to put the very case in question, receive packages of goods at the Union Depot and deliver them two, three, or four miles around the limits of the city—in the city?

A. I am not familiar with the manner of the Southern Express Company's handling their business here; but I know this, that there are local deliveries here for the delivery of express business, same as we have baggage wagons for delivering baggage; my understanding is that there are none of the organized express companies that make deliveries as far out as my own house, which is on Lafayette avenue; but they hire somebody else to do it, as I would hire a man to haul my trunk home.

1488 Q. By what authority does your railroad company, if you know, purchase wagons and teams to deliver express freight at a distance from its line?

A. By the same authority that we buy any other material, supplies, or equipments necessary for the proper transaction of the business connected with the road.

Q. But you don't tell me, Mr. Talmage, what that is; you say it is the same.

A. Well, I didn't think it was necessary for me to go through that part of it, but I will.

Q. Let us have an understanding; you assumed in your answer to my question, that is, you stated before—and I assumed the same thing in my question to you—that a railroad company can do all manner of express business as well as any other company?

A. Suppose we don't call it express business; suppose we call it transportation business; that is what they are for, common carriers.

Q. Yes.

A. And haven't they to take anything that is brought to them, no matter whose it is?

Q. Yes; they do take it and deliver it where directed for compensation; but now we are not on the question whether the Southern Express Company is not compelled to receive a package at Bremen, and haul it to the Union Depot, and there deliver it, if so directed by the consignor, to the Missouri Pacific carrier, to be carried to the destination of it; but we are upon the other question of whether the Missouri Pacific, or any other railroad, has any right to employ wagons and teams and enter this competition with the ordinary transportation companies on its lines and beyond its depots; now, do you claim you do that by general usage or by chartered power?

A. We sometimes hire draymen to haul freight to our depot, as against other competition; we may as well buy the teams and drays and haul it as to pay them for doing it.

1489 Q. But I am not asking whether you did it, but by what authority.

A. By the right that we have to furnish proper facilities for doing our business.

Q. Beyond your lines?

A. Yes; if it is necessary for us to take up freight and bring it to the depot, in order to meet competition.

Q. Now, what is the limit of distance, or is there any limit of distance on your road, to collect freight all over the country and deliver it to the Union Depot; can you send wagons and teams to St. Charles to get freight?

A. It is just in the judgment of the general manager and the heads of departments under him; if they deem it to the best interests of the company they have the right, as I look at it.

Q. Then you consider your chartered powers lie in the best judgment of the general manager; is that it?

A. To gather freight and business for the road; I construe the business of the general manager and his assistants to get the best results and the most dollars and cents for the company, and to use teams, if necessary, to gather freight, collect it, and employ freight lines in any other way, of course. To go back to where we were before—the authority. The authority comes, of course, first, from the stockholders, who elect the directors, and they, the president, and he delegates or issues his orders to the managing officer of the line, and the managing officer—I thought perhaps it was well enough to explain——

Q. You see you don't answer the last question; you were led off to another subject. The question is, do you fix a limit of distance upon your claim to the right and power to employ wagons and teams and collect freight at places distant from your railroad lines and your railroad stations?

1490 A. Well, I can't say that we have, from the fact the question has not been raised; if it were, we would.

Q. You would determine then how far you could go?

A. Yes, sir; how far it would be to our interest—how far we could afford to go—how far we could afford to reach out for business.

Q. It would be, in your mind, a question of the interest of the company whether you would do or would not do so?

A. Yes, sir.

Q. How long ago has it been since railroad companies began to claim the authority to employ wagons and teams to collect freight at a distance from their depots, stations, and lines; how many years past?

A. I cannot give you the exact length of time; but, in my own judgment, it has been done by some lines in this country for more than ten years.

Q. When did the Missouri Pacific begin to do it?

A. We commenced last year.

Q. When did the M., K. & T. begin to do it?

A. That is the part I meant.

Q. When you said the Missouri Pacific you included the M., K. & T.?

A. Yes, sir.

Q. When you say that you are referring to a recent arrangement of the express department on the M., K. & T.?

A. Yes, sir.

Q. When did the Missouri Pacific begin to do its business aside from the M., K. & T.?

A. The Pacific express organization, which is purely a railroad organization——

Q. Agency?

A. Agency—commenced, I am not quite positive whether on the 1st of December, 1879, or January, 1880.

Q. When did the Iron Mountain begin to do its express business for itself?

1491 A. I don't remember the date of that; I am not familiar with that; but about a year, I should think.

Q. How long since the Ohio & Mississippi began its express business?

A. The Ohio & Mississippi must have been doing their business now going on three years.

Q. And the Chicago & Alton, how is that operated?

A. I think the United States Express runs over that.

Q. When did the M., K. & T. cease to do its express business?

A. During this year.

Q. How long did it operate its express business?

A. We operated it only one month, and then transferred that department over to the Pacific Express.

Q. Which is an independent organization?

A. It is an organization perfected as a bureau for operating the express business over that road.

Q. Did you think at the time you did that that the M., K. & T. could not have done that business better itself than the Pacific Express?

A. The object of turning the department over, as it was done, was to put it in the same general express department that was operating the other portions of our line.

Q. Do you conceive that to the M., K. & T. alone the giving up of this express business and turning that class of business over to the Pacific Express was an injury to the M., K. & T. when considered separately?

A. I think the explanation that I made about the manner of handling the express business on our line covers this point.

Q. Suppose the business of the M., K. & T. had not been connected with any other railroad on which the Pacific Express was operated, do you consider that the act of the M., K. & T. in giving up its own express department and putting an express company on its road was an injury to it?

1492 A. In the manner in which the express department is organized and handled, I consider the M., K. & T.'s interest in the express department as valuable to-day as when we operated it as a separate department.

Q. That don't answer the question; I know you said at first that the M., K. & T. was connected with other railroads, and for the sake of harmony it gave up its own express department, and introduced the Pacific Express on its road, because the Pacific Express was running upon its connecting line; but what I wish to know is this: Had there not been any connecting line and the M., K. & T. road had stood upon its own footing in respect to its own express department, and the question of doing all the express business over it by an express company arose, do you consider that it would have been injured by giving up its express department and introducing an express company to do that business?

A. That depends upon what and who that express company was.

Q. Well, suppose everything is honestly done and to the best advantage, the best skill and business capacity—but if you cannot answer the question——

A. Well, I think I have, Mr. Glover.

Q. Do you know what the terms of the contract were between the M., K. & T. and the Pacific Express; do you know what compensation was paid by the Pacific Express to the M., K. & T. for doing business over its road?

A. What is now, or was, do you mean?

Q. What is now by the present contract.

A. I don't remember the total amount.

Q. Is it a percentum contract?

A. It is based on a fixed rate. Let me change that a little; it was a fixed rate for a certain tonnage and an additional rate for the excess.

Q. Mr. Talmage, is not the Pacific Express a transportation company, incorporated under the laws of Nebraska, independent of any railroad?

1493 A. Well, I rather think that it is; I would not be positive about it; I have not gone into the details about it, and would not say *pro* or *con* about that.

Q. When you said it was a bureau, you did not mean that it was an express department of the M., K. & T., as the Iron Mountain is an express department for it?

A. I expect the better plan would be for me to explain it to you as I understand it.

Q. Very well.

A. The Pacific Express is an organization composed, as I understand it, of officers to manage the express business on the lines of railroad, on the Union Pacific and Wabash, Missouri Pacific, and other lines that are worked in connection therewith.

Q. You mean Mr. Gould's lines?

A. Not particularly; as I understand it, Mr. Gould has no interest in the Union Pacific; it is a railroad bureau, organized for handling express business for the benefit of the railroads over which it handles that class of business.

Q. For the benefit of the railroads?

A. For the benefit of the railroads, for the accommodation of the business public, and the revenue to be derived—benefit to be derived from the revenue.

Q. Do I understand from that that the incomes which are realized from the Pacific Express belong to the railroads?

A. Entirely, entirely; every dollar, except the operating expenses, goes right back to the railroads, in proportion as they have contributed the business to the grand total.

Q. Now, are you correct about that?

A. I am, to a dot.

Q. Then, if you are correct, why is it that there is a contract between the Pacific Express and all these railroads?

1494 A. It is necessary to have some organization, some agreement, for doing the business, just as much as it is for any other branch of our departments.

Q. These officers of the Pacific Express are substantially officers of the railroads—acting for the railroads?

A. They have charge of the express bureau.

Q. Yes, I know; but the nature of that express bureau is the very thing that we are trying to find out.

A. Indirectly, they are officers of the railroad, I suppose.

Q. Mr. Talmage, have you in your possession a charter of that Pacific Express bureau?

A. No, sir.

Re-examination by Col. **Broadhead**:

Q. I will ask you a question in regard to a matter that Mr. Glover has been inquiring about, particularly as to the custom of railroads in receiving and delivering freight or passengers at their termini; I believe you didn't mention passengers, but you did mention freight. You were connected at one time with what road running from here East?

A. What is now known as the Indianapolis & St. Louis.

Q. Did they have an office on this side of the river at that time?

A. Yes, sir.

Q. What arrangements did they have for the transportation of passengers and freight, during the time you had charge of that road, coming on the lines of that road from the East destined to St. Louis?

A. They had arrangements with the St. Louis Transfer Company to transport passengers by omnibuses, and their baggage by baggage wagons, from the depot at East St. Louis to the hotels and residences in the city, and gather them from the same points and take them to the depot.

1495 Q. And deliver the freight?

A. The freight was handled in the same way by wagons and teams by this company named.

Q. I will ask you, from your knowledge of the railroad business, and your connection with it, if that has not been the custom for years past with all railroads in the United States, to deliver passengers or freight beyond the terminus of the road by some such arrangement as that?

A. Yes, sir; it is done to-day in other cities besides this.

Q. Done in New York, is it?

A. Yes, sir.

Q. Passengers going from here East?

A. Transferred across the city there from the Pennsylvania to the New Haven Depot, sometimes by transfer boat and connections, others by stages through the town, and their baggage by baggage wagons through the city.

Q. These arrangements, are they made by the passengers and owners of freight with these other transporting companies, or is it embraced in the agreement for transportation made with the railroad company?

A. It is embraced in the agreement made with the railroad, and the railroad company makes the arrangement for the transfer.

Q. How long has that been the custom in your knowledge of railroads?

A. Well, as far back as I can remember.

Q. But there has been no defined distance or line of territory beyond which railroads do not undertake to carry those passengers or freight?

A. No, sir; the distance has always been fixed by competition.

Q. When a passenger on the Indianapolis road—that you had charge of at one time—has a ticket from New York, for example, to St. Louis, where would that ticket authorize that passenger to be carried—to what point in St. Louis? 1496

A. To any of the hotels in the center of the city, or to certain limits that were within about two miles of the ferry.

Q. And his baggage?

A. And his baggage.

Q. And the terminus of the road was where at that time?

A. At East St. Louis, on Bloody Island.

Q. Did I understand you to say that you had made arrangements as superintendent, or that the Pacific railroad had made arrangements, to have the freight taken to this road by drays in St. Louis?

A. We have done such things and paid for it.

Q. That is within a reasonable distance?

A. Within a reasonable distance.

Mr. Glover: What is this Indianapolis & St. Louis road; do you know whether the charter of the Indianapolis & St. Louis road, of which you have spoken, gives that corporation a carrying franchise to St. Louis, Missouri, or to East St. Louis, Illinois?

A. The franchise, I think, for the operation of the road, is to East St. Louis for the running of trains.

Q. How is it with the Missouri Pacific; how far does its carrying franchise extend in respect to the city of St. Louis?

A. Down over Poplar street, I believe.

Q. In respect to the city of St. Louis, down to Main and Poplar?

A. Its franchise extends to the city of St. Louis, or any other city in the State; understand, through the streets and alleys and across the wharves of any city in the State.

Q. Well, when a passenger and trunk comes here from Jefferson City to the Union Depot, does your franchise extend, say, to the fair grounds, or do you undertake to send them to the fair grounds?

1497 A. If we were to extend a branch to the fair grounds it would cover it.

Q. No, not that way, but as it is now?

A. That is what I refer to—the franchise part of it. We have a right to extend a branch to the fair grounds.

Q. Do I understand—I never understood it before and I wish to know—when I bring my trunk, go to Jefferson, and come back to the Union Depot, and this man comes with a great amount of checks, and I give him a half a dollar for a seat in an omnibus to take my trunk and myself to where I live on Glasgow avenue, two miles from the depot, that it is you that are carrying me out there?

A. Not if you make a separate——

Q. No; stop; I have a ticket from Jefferson City to St. Louis; now, when that fellow comes aboard, does he represent your railroad or the transfer company, and is he responsible to me, for instance, or the Pacific railroad?

A. I expect, if you get in an omnibus, that the 'bus company would be responsible.

Q. Then you don't do it; I understand it is the 'bus company that takes me at the depot and disposes of me?

A. We may arrange for that; the transportation is a part of our business.

Q. But if my trunk is lost after it leaves the train, and taken possession of by this man with checks, then you are free?

A. That depends somewhat on the circumstances, I guess.

Q. No; but in the way the business is now conducted, don't you consider that you have ended your contract with me at the Union Depot?

A. Well, if you come from Jefferson City on a local ticket to St. Louis, that would be as far as we would care to carry you. If you
bought a ticket at some competitive point out West, we might
1498 agree to carry you out to the fair grounds. We do such
things, and have a right to if we want to, I think.

Q. You have a right, at the Union Depot, to hire a hack and put my trunk in it and go out there, and the fellow who carries me is your agent, not mine?

A. I think we could do it if we believed it to be for the best interests of the road in order to meet competition.

(Signature waived.)

(At this point the further taking of testimony in this case was adjourned till to-morrow, May 13th, at 10 a. m.)

1499 St. Louis, *May* 13, 1881.

Parties met pursuant to adjournment.

A. W. Soper, being sworn and examined on behalf of the defendant, testified as follows:

Direct examination by Col. Broadhead:

Q. You have stated heretofore in your examination what your position is and how long you have been engaged in the railroad business.

A. Yes, sir.

Q. I will ask you, as a railroad man, what you understand by the express business and the express freight, as contradistinguished from common freight.

A. It is usually considered a light business, and is usually transported on passenger trains. I consider it really a department of the freight department, as we have what we call local freights and through freights and fast freights, and this express freight is usually carried on passenger trains in quicker time.

Q. Such matter as requires quick transportation?

A. It is given that—a great deal of it don't require it—but it is given quicker transportation, being carried on passenger trains.

Q. What do you call fast freight?

A. Fast freight is an arrangement with different lines of roads, by which we run freight trains faster, and expedite the delivery of freight for long distances.

Q. This freight is carried upon freight trains, but with more rapidity than ordinary freight trains?

A. Yes, sir.

Q. Is that what is meant by fast freight lines?

A. Yes; for carrying merchandise.

Q. Would you look at express freight as a species of fast freight, or fast freight as a species of express freight?

A. Yes; look at express freight as fast freight.

1500 Q. Have you had anything specially to do with express business as a railroad man?

A. Yes; as general manager of the Iron Mountain railroad since we established our express department.

Q. When was that express department established?

A. June, 1880.

Q. How is it operated in a business point of view, as far as regards the interests of the road, and the interests of the public?

A. It is operated to the entire satisfaction of the public, and, as I understand, more satisfactorily than it was operated by the Southern Express Company before.

(Answer objected to, as incompetent.)

Witness: We have given lower rates to the public, and consequently benefitting them, and largely improving the territory along the line of the road in stimulating the transportation of products which are usually carried by our express trains.

(Complainant's counsel objects, as incompetent and irrelevant.)

Q. From your knowledge of the railroad business, what reason is there, if any, why an express business cannot be done as conveniently by a railroad itself, as by an express company?

A. I believe it can be done more conveniently and more economically by the railroad company.

Q. In what respect, Mr. Soper; please give some reasons and facts.

A. At nine out of ten or more of the stations the agent in the employ of the railroad company has time to give this matter attention, and to solicit business, and feeling an interest as the agent of the railroad corporation he is inclined to look to the general prosperity of the people and the corporation itself, more than an express company's agent would.

(Complainant's counsel objects, as irrelevant and incompetent.)

1501 WITNESS (continuing): The interests of the corporation are to build up all these local interests along its line, and to develop them, not so particularly for the time being as for the future.

Q. What effect has the increase of business on the cost of transportation?

A. It reduces it, sir; there are certain fixed charges that the railroad company has to carry out, and the larger its business the cheaper it can transport its commodities.

Q. Does it require any larger number or a less number of agents to transact the express business of a railroad than if it was done by an express company operating on the line of that road?

A. The same men at a majority of all the stations that attend to the ordinary duties of selling tickets, and the passenger and freight departments, can at the same time attend to the duties of the express department.

Q. Is that a fact on the line of your road now?

A. It is, sir; at every station, I believe, with three exceptions out of one hundred and forty.

Q. You speak of what road?

A. The Iron Mountain, from St. Louis to Texarkana and to Columbus.

Q. What kind of an express business is done by the express department of the Iron Mountain railroad?

A. The carrying of freights, vegetables, and perishable property—small packages.

Q. The same business that is done by an express company?

A. The very same, sir.

Q. In all respects, or are there exceptions to it?

A. In every respect, sir.

Q. Through what kind of country does the Iron Mountain railroad run—through a sparsely or densely populated country?

A. A sparsely-populated country.

1502 Did you state in your examination before the difference in the cost of running passenger trains and express trains?

A. No, sir; it costs about four times; we calculate that it would cost about four times to run a passenger train what it would cost to run a freight train.

Q. What does the increased expense consist of?

A. The increased speed and expensive cars that are used in the transportation of passengers, and the wear and tear upon the track from the speed of the trains.

Q. Has a sparsely-populated region of country anything to do with the cost of transportation?

A. It has, sir.

Q. In what respect, Mr. Soper?

A. Its business is lighter and necessitates a larger revenue from it in order to secure the expenses with any profit to the company on account of the fixed charges that are always there in connection with keeping up the track, the taxes, and the interest.

Q. Expenses necessary to be incurred, whether a small business is done or a large business?

A. Yes, sir.

Q. What facilities, as an express company, in collecting and delivering packages for transportation, has the Iron Mountain railroad express department?

A. We have the ordinary facilities; the same as used by the express companies.

Q. In developing the business of the Iron Mountain railroad have you, as superintendent, extended any favors to shippers on the line of your road?

A. Yes, sir.

Q. Under what circumstances?

A. Wherever we believed it to be the interest of the company to work up or build up business we issued free transportation and reduced rates, and calculated to favor the public generally, believing it to be to the company's interest.

1503 Q. That is on the line of the Iron Mountain railroad through the State of Arkansas?

A. Yes, sir; and Missouri.

Q. Can you refer to any particular line of business in which those favors have been extended?

A. Yes, sir; in the shipment of ore, lumber, live stock, and fruits; we have taken particular interest in sending nurserymen to the country to see that they should secure a better quality of fruit and educate the people that are producers to raise such as are more desirable for the market, with the object of enriching themselves, and which would eventually enrich the corporation.

Q. To that extent; that is more particularly in reference to the express business on the road, is it?

A. Yes, sir; as far as the fruit and nurserymen's business is concerned.

Q. They make all shipments by express?

A. Yes; very nearly; we have occasionally brought shipments of fruit by freight trains.

Q. What effect has that course of business had on the cost of transportation on your road?

A. It has a tendency to increase it, sir; that is, to increase our passenger business.

Q. I wish to know whether the increase of the business has tended to lessen the cost of transportation?

A. Yes, sir; it has had a tendency to lessen the cost of transportation.

Q. You don't mean, then, to say that it tends to increase the cost of transportation?

A. No, sir.

Q. What can you say in regard to safety to shippers in case of loss?

A. I consider the responsibility of the railroad company greater than [that] of an express company, and the safety to shippers consequently would be greater.

1504 Q. What about through shipments beyond the line of the railroad; have you found any difficulty in transacting business where it has to go beyond the line of the road?

A. No, sir; the lines are all responsible for the carrying of it; in case of loss it is settled on whatever line makes the loss.

Q. Do you know anything about what is called accessorial service, or charges or expenses incurred by an express company or an express department of the railroad company, other than the cost of transportation?

A. We have such expenses in connection with our regular freight department—in the drayage of freight to and from our depots to the stores for delivery; we consider it a part of our business the same as the rental of offices and the hiring or soliciting of agents, and the paying of taxes, interest, and everything else—a part of the regular expenses of the corporation.

Q. Do you know whether that enters into the estimate of the tariff charges for transportation?

A. It does.

Q. Has it a tendency to increase the business of the company?

A. It has, sir; the soliciting of the business and the convenience; the more convenience given to the public the more shipments given to the railroad, and the larger the business.

Q. What, if anything, in your opinion as a railroad man, ought the railroad company allow to an express company for its expenses in bringing freight to the railroad for transportation?

A. We don't consider that we ought to allow anything for it; we make a tariff from our depot or from the store, which is the same, and no extra charge is made for it; competition usually brings these matters about, as for instance, when we are running into the Union Depot—before we run into the Union Depot, we ticketed passengers from New Orleans and Texas, and all competing points to St. Louis, and our depot at that time was at Plum street; 1505 the fare was the same to Plum street; but there we furnished omnibuses and carried them to the Union Depot, on account of the other lines being able to deliver their passengers there. We considered that a part of the general expenses of the corporation, the same as the agencies that were soliciting that business in Texas or New Orleans.

Q. The terminus of your road was then where?

A. At Plum street.

Q. How long have you been engaged in the railroad business?

A. Twenty-five years, sir.

Q. What has been the custom of railroads in delivering freight, passengers, and baggage at the *termini* of their respective roads?

A. Their practice is to deliver it the most conveniently to their passengers, to the most convenient locations for them, and that is often settled by competing lines making deliveries; I might instance an office in Little Rock: If the Memphis & Little Rock rail- should say they would carry their passengers that come from New York or Louisville and deliver them up in the city we would have the same thing to do—the Iron Mountain railroad would—and we will ticket from St. Louis or Louisville to Little Rock at the same price, whether the passenger got off at the depot, or whether he got in a 'bus and went up into the town; no extra charge would be made.

Q. Do you know whether that custom applies to railroads generally or not?

A. It does, sir.

Q. How far have you been in the habit of extending these facilities to passengers and shippers of freight—I mean in point of distance from the terminus of the road?

A. Well, usually to within a mile or two miles, whatever we considered the common interest of the company to do to secure business.

1506 Q. That you have done under what you conceived to be your chartered rights?

A. Yes, sir; the same as in the unloading and loading of freights. There are certain freights the company unloads, and we hire the men to deliver that in the depots or on the grounds, and also to load at stations along the line, and then there are others that we require the shippers to do it.

Q. Do you deliver all freights at your freight depot?

A. Or on the grounds in the yards.

Q. You say on the grounds; you mean where the trains come?

A. On other tracks; yes, sir.

Q. But if not received there, then it goes where?

A. If not received there it goes into the depots.

Q. The freight depot?

A. Yes, sir; or we sometimes deliver it to their stores.

Q. Now, these freight depots; how far are they, or are they any given distance from the terminus of the track?

A. They are at the terminus of our track.

Q. Are there other roads terminating at St. Louis that have freight depots at a distance from the terminus of the road?

A. No, sir; their freight depots are usually at the terminus of the road, but they take the freight from the depots and deliver it to the stores—to the consignees.

Q. The railroad company does?

A. Yes, sir.

Q. They deliver to the consignees?

A. Yes; the same as in the express department.

Q. In any part of the city, or within a given limit?

A. Well, usually to the stores in various parts of the city.

Q. That is done by wagons and drivers?

A. Teams that are hired by the railroad company.

1507 Q. Col. Soper, will you tell me, ordinarily, what number of passenger cars have made up a train from St. Louis to Texarkana for the last three or four years?

A. Passenger cars?

Q. Yes; how many passengers cars in a train?

A. Usually three to five.

Q. Don't you think three is a very small limit for a train of passenger cars from St. Louis to Texarkana?

A. No; I don't think it will average more than four, now, sir.

Q. How many cars in all enter into a train usually from here to Texarkana?

A. Seven to nine.

Q. How many from St. Louis to Columbus, Kentucky, during the same period of time—how many passenger cars?

A. Usually two, sir.

Q. How many in all, including postal car and baggage?

A. Three to four.

Q. How many from Texarkana to St. Louis, reversing the thing, during the same period—the whole number of cars?

A. Seven to nine.

Q. How many of those were passenger cars.

A. Three to five.

Q. The same thing?

A. Yes, sir.

Q. Now, you make the same answer from Columbus to St. Louis that you made from St. Louis to Columbus?

A. Yes, sir.

Q. Have you included the sleepers in this estimate?

A. Yes, sir.

Q. Didn't you often, in 1878 and 1879, have from ten to thirteen cars all told on a train?

1508 A. On some parts of the road we did, but they didn't average that number, sir.

Q. You mean they wouldn't average that every day?

A. No; we wouldn't average it in a year.

Q. How often do you think there was a train of from twelve to fourteen cars?

A. From St. Louis to Texarkana?

Q. Yes.

A. Well, perhaps three times in the course of a year.

Q. Not oftener?

A. I don't believe there ever was; I never saw——

Q. You never saw what?

A. I never saw fourteen cars in a train.

Q. Nor thirteen?

A. Nor thirteen.

Q. Nor twelve?

A. No, sir.

Q. Nor ten?

A. No, sir.

Q. Nor nine?

A. Yes, sir; couldn't run them with one engine; there would be two trains if there were fourteen of them.

Q. During the last three or four years hasn't there been a general reduction on Western roads in rates of freight?

A. I can't say that there has, sir; there has been a reduction on a good many of them.

Q. Has not the aggregate tariff to the public for freight been diminished in the last three or four years?

A. In the West?

Q. Yes.

A. Well, it has been reduced in a good many instances; wherever it was considered policy and to the interest of the company to do it, and in many cases where legislation has compelled and forced them to do it.

1509 Q. Has the business of the railroads of the West, including Missouri, been increased in the last three or four or five years?

A. Yes, sir; it has.

Q. Did I understand you to say, in answer to Col. Broadhead, the increased volume of business was accompanied with a corresponding advance in the price of freights?

A. No, sir.

Q. What did you say about that?

A. I said it reduced the expenses.

Q. But did not on freight?

A. We calculate to get some of that for ourselves, you know.

Q. So that when you run cars for less and less you don't diminish the cost of transportation to the shipper?

A. Oh, yes, we do; if we carry it for less.

Q. Now, I ask, if you carry it for less when your expenses are less?

A. Not always, sir.

Q. Do you ever?

A. Yes, sir; where it is for the interest of the company to reduce tariffs, we do.

Q. I don't ask you what the company does for its interests, but for the fact whether there has been a reduction of freights?

A. There has in some instances, but not in all.

Q. I don't ask whether it has been in all, but whether in general the cost of transportation has been reduced—the aggregate cost?

A. You mean the cost to the company or to the public?

Q. The cost to the shipper—to the public—you have already said the expenses have been diminished.

A. It has been reduced in a good many instances, yes, sir.

Q. In a good many instances; I want your opinion?

1510 A. But not in every one of them.

Q. I don't ask you anything about particulars, but whether or not the cost of transportation, in the general aggregate, has been diminished to shippers?

A. I don't know how to answer that more plainly than I have.

Q. Why, Colonel, there may be a decrease on three articles and no decrease on one, and it may be on the whole there is a decrease of ten per cent., and you answer, during the time it has not been decreased on every article; I am asking whether in the aggregate there has been a decreased cost of transportation per ton per mile—whether it has been decreased?

A. Yes, sir.

Q. So I thought, but you didn't understand me. Now, you say that your railroad department is doing the very class of business that the express companies do; do you mean to say that?

A. I do.

Q. Do you collect paper and bills?

A. The express department does.

Q. Haven't you published a card that you didn't do it; that you have abandoned it for two months?

A. Not to my knowledge.

Q. Then perhaps I don't put the proper question; do you handle, through the express department, negotiable paper requiring demand and protest preliminary to collection?

A. That is my understanding, that they do.

Q. Don't you know in your published tariff, which Mr. Aikin has put forth, that he has, in express terms, abandoned every such thing?

A. No, sir; I don't know that he has.

Q. You don't know?

A. No, sir.

Q. Now, isn't it your opinion, and haven't you intended to indicate it by your answers to Col. Broadhead this morning, that no one
ought to conduct an express business over the St. Louis, Iron
1511 Mountain & Southern railway except the express department
of that railroad company?

A. Yes; I think it would be better for the company.

Q. And that the general prosperity of the company, and of shippers, depends upon the exclusion of everybody from it except its own express transportation department?

A. I think that that would be to the interest of the people along its line to have the railroad company do its own express business, and of the company also.

Q. You have said it takes a less number of agents to conduct the express business when done by the express department of the Iron Mountain railroad than when done in part by that express department for the public, and in part by the express company; as, for instance, the Southern Express Company; do you mean any more by that than this, that when two express agencies are at work each has to have its own agents?

A. Well, I mean the same agents the railroad company employs to attend to its other duties along the line of the road will attend to the express department, the same as it attends to the ticket department, the selling of tickets; it has an agent there who does the business of the company.

Q. That is not the question; I know that; but when you say it takes fewer men to conduct the express business if it were wholly and entirely conducted by the express department of the Iron Mountain railroad, do you mean any more than that if the Southern Express conducts its own business over the road it must have additional agents.

A. I don't know that I said it required less men, did I?

Q. I thought so; if I had not, I would not have asked the question.

A. I don't think I said it would take less men.

1512 Q. Do you mean that your express department expends less in the express service done over this road than the Southern Express expends in getting its express service performed; I don't allude now to the freight?

A. Yes, sir; I believe the railroad company can operate it with less expense than the express company.

Q. Why?

A. Because the same agent that is hired at the different stations along the line of the road works for the same amount of money without additional expense—or would—and there would be a saving of the amount of money

Q. Do you know that you pay your agents less than the Southern Express Company pays its agents?

A. I think we pay them the same now—about.

Q. You have just said you didn't have any more of them, or less—that it didn't take any more men to do their business than yours.

A. No, sir.

Q. How, then?

A. They allow them a percentage on that department, the same as we do on the sale of passenger tickets, to make up their salaries.

Q. Now, when you have an agent acting for the Iron Mountain Railroad Company, whose salary is paid by the Iron Mountain Railroad Company, and who also does the express service, do you charge his salary to the Iron Mountain railroad service, or to the express department service?

A. It goes to the Iron Mountain railroad service.

Q. Then he works for your express department for nothing?

A. He works for the passenger department, and we don't charge it back to the department, but it is a part of the general expenses of the company; we hire a man to solicit business, we will say, and
pay him a hundred and fifty dollars a month; he is to look up
1513 all the freight he can and secure what passengers he can secure
and all express matter; when the voucher is paid we charge
it to the general expenses of the company.

Q. That is the reason your express service costs you less?

A. No, sir; it is not; it is a part of the general expenses.

Q. But you just told me the express service that is paid is charged to the general Iron Mountain expense account.

A. Yes, sir.

Q. Well, then, of course you don't charge express service for that?

A. No; we don't charge express service; no, sir.

Q. Well, that is very plain why it makes it less. Now, do I understand you to say it costs four times as much to run the passenger train from St. Louis to Texarkana as it does to run the freight train through with the same number of pounds of freight; do you say that?

A. We estimate from an examination of that; we estimate it about twice the cost.

Q. Well, now, does it take twice as many men to run the passenger train as it does to run the freight train?

A. No, sir.

Q. Does it take twice the time to run the passenger train through as it does the freight train?

A. No, sir.

Q. Well, does the wear upon the track amount to twice as much wear as is done by the passenger train of the same weight? Does it cost twice as much as the running of the freight train all the time would?

A. Yes, sir; I believe the wear and tear of the track and the speed is more than double.

Q. How has that been ascertained?

A. It is ascertained by the fact that slow trains running
1514 over railroads don't require the amount of labor to keep them
up—to keep them ballasted and surfaced.

Q. Have you ever made a calculation of that, so that you can exhibit to me any figures—I mean on the wear and tear and injury done to the machinery and cars of the road, and of rails, by the running of freight trains through, and by the running of passenger trains through? Have you ever gone into the figures of that and resolved it?

A. Yes; but it is a thing that no two people agree upon; it is one of those things you can't figure upon exactly.

Q. Of course not; but can you give me that calculation?

A. I can give that calculation to show that it costs about twice the amount of money.

Q. Oh, that is a general conclusion.

A. But, in connection, we also figure the cost of these trains. We pay ten thousand dollars for a sleeping car; that will furnish a whole train of cars, and there is the wear and tear of that.

Q. But the palace car company pays you for hauling the car, don't it?

A. No, they don't; we pay for hauling it; we carry it for nothing and haul it besides.

Q. Do you tell me you get no pay for hauling a Pullman car?

A. No, sir; we pay for it, on the contrary—for the privilege of hauling it.

Q. And lose money on every car?

A. Yes, sir.

Q. Why do you do it?

A. Because competition brings it into use, and we are forced to do it to accommodate the public.

Q. If it were not for the transportation of the palace car, the cost of running a passenger train through would not be doubled, would it?

1515 A. Yes, sir; the coaches cost more money—a good deal; so does the baggage, the mail, and express car all cost a great deal more money, and the wear and tear is greater.

Q. How long is a freight car?

A. From twenty-eight to thirty-three feet.

Q. How long is a passenger car?

A. From forty-five to fifty feet.

Q. Suppose you resolve that by the fact of the weight and the force exerted on the rail—I do not mean to say one car—I do not mean to ask the cost of transporting one car, forty feet long, compared with another of less length, but I mean, or intend to have you compare, the cost of transporting or running a freight train through with the running of a passenger train through, of equal weight and equal wear and tear—the heaviest passenger train with freight trains. Which are the heaviest, the passenger train or the freight train?

A. The freight train is generally the heaviest.

Q. The friction on the rail by a heavier body is greater than one that is less?

A. It is; we don't run the number of cars in a passenger train that we do in a freight train.

Q. Can you submit to me any calculation of figures, based, of course, upon your judgment, where judgment is an element, showing the different cost of operating a through freight train from the cost of operating a through passenger train of the same weight? Have you made a calculation in figures?

A. Yes, sir.

Q. Have you got it, and will you submit it?

A. No, sir; I haven't got it, but we have figured on it a good many times to see what the difference in the expense was.

Q. Now, is this estimate of yours, that it costs twice as much to run a passenger train through as it does to run a freight train, of equal weight, peculiar to the Iron Mountain railroad?

A. No; I believe it is general.

1516 Q. Do you know what the fact is on the Hannibal & St. Joe road?

A. I do not.

Q. Do you know what it is on the M., K. & T.?

A. I do not.

Q. Do you know what it is on the Missouri Pacific?

A. No, sir.

Q. Do you know what it is on the Fort Scott & Gulf road?

A. I do not know what it is on any other road. I know that is the calculation we generally make, that it is about twice the expense of running a passenger over freight.

Q. Are you not aware that the reports of the railroad commissioners of different States show that in a large number, if not a majority, of the roads, the cost of running a passenger train through is less than the operating of a freight train?

A. No, sir.

Q. Have you never looked at them?

A. Yes, sir; but I have never seen that calculation made.

Q. It is not a calculation; it is a statement.

A. Well, I haven't seen it.

Q. You put express freight into the freight department of the railroad as a part of it?

A. Yes; I consider it a part of it.

Q. Belongs to that class of its business?

A. Yes, sir; if it is taken and put in baggage cars and carried by passenger trains, of course it takes it out of the freight train.

Q. I don't know that I understood you exactly when you said that the accessorial service (by which you mean the service—to illustrate: Here, in St. Louis, express matter is collected about the city and delivered by wagons and teams to the trains of the Iron Mountain railroad) enters into the cost of the railroad transportation. Will you please explain what you meant by that?

1517 A. Well, I mean by that that we make no special charge of it; we calculate that it is to the interest of the company in securing the amount of extra business to go and gather it, and we make the same sort of connection with that that we would if the property was brought to the depot for delivery.

Q. Colonel, do you know what has taken place recently in respect to the sale of the Iron Mountain stock to the Pacific Railroad Company of Missouri?

(Objected to, as irrelevant and incompetent.)

A. My understanding is that it is to be exchanged by the stockholders for Missouri Pacific stock, giving four shares of Iron Mountain stock for three shares of Missouri Pacific.

Q. When was that done?

A. Well, it is being done now; done in New York. The majority of the stock, I believe—the majority of the stockholders—agree to it.

Q. Is that done by any authority of the board of directors of the St. Louis, Iron Mountain & Southern railway?

A. No, sir; it is done by the stockholders.

Q. Well, is it done by any authority of the board of directors of the Missouri Pacific Railroad Company?

A. I can't say.

Q. What is the process by which it is being done?

(All of the foregoing is objected to by the defendant's counsel.)

A. The stockholders of the Iron Mountain subscribe to a paper stating that they will agree to take Missouri Pacific stock on that basis for Iron Mountain stock.

Q. After that is done, suppose I am a stockholder in the Iron

Mountain railroad, and I have four shares of Iron Mountain stock; then what am I to do, according to that agreement?

1518 A. You get three shares of Missouri Pacific stock.

Q. But I wish to know how it is done?

A. If you agree to do it, that is the way it is done.

Q. Agreeing to do it is not the way it is done; I have my four shares of stock of the Iron Mountain railroad; in order to get three shares of the Missouri Pacific, what have I to do?

A. You have to send your stock to the Missouri Pacific Railroad Company; they give you three shares of the Missouri Pacific stock for it.

Q. Where do they get that stock to do that?

A. Why, they print it.

Q. I would like to know how the Missouri Pacific railroad, which sold its stock, say, to Col. Broadhead, years ago, is to take that stock of Col. Broadhead and deliver it to Henry Marquand; for instance, say Col. Broadhead has three shares of Missouri Pacific stock, and he has agreed with Marquand——

WITNESS: With Mr. Broadhead's consent, eh?

Mr. GLOVER: To give that three shares to Marquand for Mr. Marquand's four shares in the Iron Mountain railroad, so that Col. Broadhead goes over as a stockholder to the Iron Mountain railroad, and Marquand goes over to the Pacific; I can understand, of course, that that can be done between them; but how the Pacific railroad is to give Mr. Marquand three shares of stock for four of his, I don't understand; you said that the Pacific railroad issued the stock, in the case that I put, to Marquand; how do they get it?

A. Marquand?

Q. No; the Pacific.

A. Why, they print it; make it, you know.

Q. Do you think if I get a piece of paper printed that that is stock?

A. No; I suppose the Missouri Pacific will increase its capital stock, and may use that new stock for this purpose.

1519 Q. When you have been extending these generous facilities to shippers, to which you have referred in your answers to Col. Broadhead, did you extend the same to the Southern Express Company?

A. We have always given the Southern Express Company all the passes that they ever asked for, when they were——

Q. Paid for?

A. When they were operating the Iron Mountain Railroad Company, without any pay.

Q. Have you issued them any free passes and given them any generous facilities since the institution of this suit?

A. Not any.

Q. And haven't you been giving these generous facilities, of which you have spoken, to other persons during the pendency of this suit?

A. We have always given them to other persons.

Q. During the pendency of the suit and before?

A. But not on account of the request of the Southern Express Company.

Q. No; I didn't ask you anything about that, Col. Soper; isn't it a fact that you have issued a great many free passes to general shippers, and that you have made the Southern Express Company pay for every pass over your road?

A. No, sir; they never paid for one pass over the road, and we never have issued, I don't suppose, a half a dozen, Mr. Glover, to any shippers by express.

Q. I am not talking about shippers by express.

A. Oh, shippers generally?

Q. Yes.

A. Always issue them to shippers—general shippers of live stock, iron ore, and even issue them to attorneys.

Q. Haven't you given a great many free passes to the general public dealing with your road since the commencement of this suit;
and haven't you required the Southern Express Company to
1520 buy tickets—1000-mile and 1500-mile tickets—for every ride
upon your road, sir?

A. We never have issued any more passes to the public since the suit than we have before.

Q. You don't answer the question; the question is haven't you issued a great many since the suit—without comparing with what you did before?

A. I say we always have issued a great many passes.

Q. Haven't you made the Southern Express Company pay for every one of their agents that have traveled on your road?

A. We make them pay—those riding on passenger trains.

Q. Haven't you made them pay more than you made others pay?

A. No, sir; where we carry a man for nothing and give him a pass, If I give you a pass and the other fellow paid anything, he would pay more than you if you got it for nothing.

Q. Haven't you, since the commencement of this suit, sold many fifteen hundred-mile tickets and thousand-mile tickets at lower rates when sold to the general public than you have when sold to the Southern Express Company; that is, haven't you required the Southern Express Company since the commencement of the suit to pay full rates for tickets of travel, and haven't you sold at under rates for others?

A. Well, we have a varied price for that business.

Q. But you don't answer.

A. The ministerial portion of the community we carry at half-price, and we sell fifteen hundred-mile tickets at $52.50—that is a reduced rate—three and a half cents a mile, that is a half cent less than we sell a single ticket; so we have given the express company the benefit of these reduced rate tickets.

Q. Still, you don't answer the question, and I will not press it—
having put it three different times.
1521 A. Well, I will say to you we do sell them cheaper, and we
sell ministerial tickets at half rates; but these express fellows

outside of the church, we can't sell the same price that we would a minister.

Q. Do you not at this time issue a great many passes to fruit-growers at under rates?

A. No, sir.

By Col. BROADHEAD: I will ask whether the Southern Express Company is interesting itself in increasing the business of the Iron Mountain railroad in any way, if you know?

A. No, sir; they are not.

(Signature waived.)

1522 T. L. McKISSOCK, of lawful age, being produced, sworn and examined as a witness on the part of the defendant, testified as follows:

Present, on the part of the defendant, Jas. O. Broadhead; no counsel appearing for plaintiff.

Direct examination by Col. BROADHEAD:

Q. What is your business, Mr. McKissock?

A. I am a railroad superintendent.

Q. Superintendent on what road?

A. Of the Kansas City & Northern it was; the Wabash, St. Louis & Pacific, it is.

(Owing to the absence of counsel for plaintiff, and by consent of Mr. Albright, agent for the plaintiff company at St. Louis, the further taking of testimony in this cause was postponed to 11 a. m., Monday, May 16, 1881.)

MAY 16, 1881.

Parties met pursuant to adjournment, and the examination of T. L. McKissock was resumed, as follows:

Q. You stated, I think, that you had been about twenty-four years in the railroad business?

A. Yes, sir.

Q. In what capacity have you acted of late years?

A. As railroad superintendent and chief engineer.

Q. What roads have you been on in Missouri, in that capacity?

A. The Missouri Pacific, the Iron Mountain & Southern, the Kansas City & Northern, now the Wabash.

1523 Q. What do you understand, as a railroad man, by express freight, as contradistinguished from common freight; what is the general character of it?

A. Light freight and valuable freight, that requires safety and promptness in delivery, and perishable freight to some extent.

Q. In the roads that you have had charge of in this State as superintendent, has there always been a separate express business carried on, on those roads, by different companies, separately from the railroads?

A. Yes, sir; until at present on the Wabash, they are partners in the express company I believe, or stockholders.

Q. Have you been on a road where the road did its own express business?

A. Not in Missouri; no, sir.

Q. Do you know what other roads in the United States are undertaking now to do their own express business?

A. The Ohio & Mississippi does, I think; the Baltimore & Ohio does; there are several New England roads that did, and the Long Island road, but I don't know whether it does now or not; and the Iron Mountain road; the Kansas Pacific did for a long time.

Q. How long has it been since you have known of a railroad in the United States anywhere undertaking to do its express business separate and apart from an express company?

A. Some Eastern roads have done so for a number of years; in the West, for the last eight years, I should think; the Iron Mountain, I believe, did its own express business some ten years ago and then changed.

Q. Have you had much to do with the freight business on roads in the offices you have held?

A. Yes, sir.

Q. And claim to know something about the character of that business as a railroad man?

A. Yes, sir.

Q. In your opinion as a railroad man, is there any reason why a railroad cannot do its own express business; and, if so, what is it?

1524 A. I know of no reason.

Q. So far as the accommodation to the public is concerned, and the safety of transportation, is there any reason why a railroad cannot do it as well as an express company?

A. I think it can do it equally well; particularly now that we have got to operating longer lines.

Q. How about the matter of forwarding express freights to points of destination beyond the terminus of the road?

A. They can forward by other express companies.

Q. Just as you forward the common freight?

A. I think so, yes, sir; unless they should all combine against it, and I think they are not doing it now.

Q. Have the express companies, as far as you know, always been carrying the same kind of freight all the time, or has it been changed from time to time?

A. I think it has changed very little, sir.

Q. Is there any of the business that is called "express freight," which is now occasionally carried by freight trains, or is there an entire separation between them?

A. There is an entire separation; charges are usually higher when carried by express trains, and therefore coarse freight is carried by freight trains.

Q. Of course, it is always optional with the shipper whether he would send it by freight or express?

A. Yes; if he sends coarse freight by express and pays the charges, it is usually because he is in haste.

Q. I wish to know whether that coarse freight is not sometimes usually sent by express trains?

A. Oh, yes, at the option of the shipper, or his direction, rather.

Q. What has been the custom among railroads in regard to the delivery of freight at the termini of the road; where is freight delivered usually; I mean common freight?

A. At the depots.

1525 Q. And then distributed how; how is it distributed?

A. You mean common freight or express matter?

Q. Common freight.

A. After it has arrived at its terminus, the consignee claims it there and takes charge of it at the depot.

Q. Is that always the case; does the consignee take charge of it at the depot, or does the railroad company ever undertake to deliver to the consignee—in St. Louis, for example?

A. Very rarely, I think, sir.

Q. Has it been customary with railroads?

A. I don't know of any instance, no, sir; on roads terminating the other side of the river, of course they have made a custom of bringing freight to this side, but that is done by an intermediate party.

Q. Under what contract? Under the contract made with the shipper of freight—between the railroad company and the shipper, or between the forwarder and the shipper?

A. Between the forwarder, I think, and the shipper; not between the railroad company; no, sir.

Q. Goods intended for shipment by rail—how do they reach the depot of the company; are they ever brought there by the railroad company or its officials, or delivered always there by the shipper?

A. Usually delivered by the shipper at the depot; not always.

Q. Does it ever happen otherwise?

A. Yes; when the North Missouri depot was at the extreme north end of the city, they sent down and gathered up freight and hauled it to the depot themselves; the railroad company did that, but that is some years ago.

Q. How long did that course of business continue?

A. Several years.

Q. Did the railroad company employ wagons and drivers for that purpose?

1526 A. They employed a company who had wagons and drivers; yes, employed them indirectly.

Q. Where was the office of the North Missouri Railroad Company at that time, or the freight depot?

A. At North Market street; two miles or more, north.

Q. Did they give their bills of lading at that point?

A. I don't know, sir; I presume that they had an office in the city for that purpose.

Q. Have you ever estimated the difference in the cost, if any, between running a freight train and a passenger train?

A. There is a very great difference, but I never estimated it; other superintendents have done so, but I never have.

Q. Which is the most expensive?

A. Passenger trains; much the most expensive.

Q. What are the reasons for that; what makes it most expensive?

A. It requires greater speed, greater care, greater attention, less tonnage of freight moved with the same amount of care, and a great deal of risk.

Q. Do you know the region of country over which the Iron Mountain Railroad Company runs from here to Texarkana?

A. Yes, sir.

Q. Is there any difference between the cost of transportation on a railroad running over a densely populated country and one running over a sparsely populated country?

A. In the passenger transportation?

Q. Any kind of transportation.

A. Well, the cost of operating a passenger train through a densely populated country is less always, a less percentage to the earnings, than over a sparsely settled country.

Q. You would expect more business from a densely populated country than a sparsely populated country?

1527 A. Yes; the same effort and the same expense, it produces more earnings.

Q. Can a company afford to run a road more cheaply in proportion to the amount of business it gets?

A. Yes, sir.

Q. What is the character of the country through which the Iron Mountain railroad runs as compared with the region of the country through which roads in this State and the roads running east of it are concerned?

A. Quite sparsely settled.

Q. You are acquainted with the whole line of the Iron Mountain railroad?

A. Yes; had charge as superintendent, until about five years ago.

Q. It was then finished to Texarkana, was it?

A. Yes, sir.

Q. You have never been engaged, I believe, directly in the express business yourself, have you?

A. No, sir.

Q. You only know of it as connected with roads over which you have had charge?

A. Yes, sir.

Cross-examination by Mr. SHEPLEY:

Q. You state that the North Missouri railroad at one time collected ordinary freight from merchants and shippers in the town and hauled it themselves to their depot; they were then in competition, were they not, for freight with what is known now as the Missouri Pacific railroad?

A. Yes, sir.

Q. The Missouri Pacific railroad had their freight depot on Seventh street, very near the business part of the city?

A. Yes, sir.

1528 Q. And in order to compete with the Missouri Pacific in freights it was necessary to haul freights to the depot of the North Missouri railroad, which was how many miles from the business center?

A. Two miles, perhaps.

Q. And that was the reason why they hauled it, wasn't it?

A. Part the reason, sir; I then had charge of the Missouri Pacific road, and we claimed that they had no right to do that hauling; they had a right to haul it a part of the distance, and the shipper had to haul it a reasonable distance to the Missouri Pacific; but they hauling it the entire distance we claimed was a cut upon our rates, chiselling us out of the business, and we said: You have a right to haul that freight half way down town, about as far as the Missouri Pacific depot is, but you have no right to go to their stores and take it from there, because it saves them the amount it would cost them to take it to the Missouri Pacific depot.

Q. Practically it was a cut on rates?

A. To some extent it was, but they claimed it wasn't.

Q. But it was done?

A. On account of their location being out of the way.

Q. And it was done in competition for the business of the Missouri Pacific railroad?

A. Yes, sir; really.

Q. You say you have never made a computation between the cost of passenger and freight trains, but you can give your opinion that the cost of running a passenger train is largely greater than that of a freight train?

A. Yes, sir.

Q. Are you not aware that there have been made computations on the Hannibal & St. Joe, the St. Louis, Council Bluffs & Omaha, the Fort Scott & Gulf, and the Chicago & Alton roads, in which a different conclusion has been arrived at, and they find the
1529 cost of running a passenger train per mile is less than that of running a freight train?

A. I know they say so, but I don't think so.

Q. So there is a difference of opinion between railroad managers in that regard, is there?

A. Yes, sir.

Q. Some taking one view and some another?

A. They do not take into consideration the entire surroundings; they merely take the actual moving of that car; but I take into consideration all the risks; very many matters that they do not take in.

Q. Isn't this conclusion which these roads I have named have come to the same conclusion reached by the Massachusetts roads?

A. I don't know, sir; I don't consider them good authority; I consider Charles Francis Adams a myth; he gets up stale anecdotes of accidents that have happened on railroads and then publishes a book; but he don't propose to prevent them; and he gets credit for a great deal of learning on other people's experience.

Q. Take the example of running trains—passenger and freight trains—from St. Louis to Texarkana; how much less time does it take to accomplish the distance between a passenger train and a freight train?

A. Much less than half the time that the freight goes.

Q. Then there is a large reduction of expenses, isn't there?

A. No, sir; take into consideration the cost of operating a passenger train; I take all—everything connected with it; I take this ticket office on the corner of Fourth and Chestnut streets, which has as high as $6,000 a year rental, gilt windows, high salaries to clerks, to agents who sell the tickets, all those placards you see about the country, the cost of printing them, all those things; the cost of running the train is not simply the men operating the train; there are three or four clerks about this building who are devoted to
1530 the passenger business more than the freight; that takes care
of itself.

Q. But you have to have freight offices, don't you?

A. Not so expensive. The Pullman car which you lug along, that you pay Pullman for the use of, all that goes to passenger expenses; that is so much more to the expenses of the passenger business.

Q. Oh, I am talking about what it really costs to run a passenger train?

A. The one train—to run it per mile; then the passenger train can be run as cheap as the freight train, the mere moving of the train, taking it from the depot here and delivering to Texarkana without taking into view the fact that it runs three times as fast as the freight, and no track out of order.

Q. Take all that, isn't it a fact that the matters that you have undertaken to put in your estimate are not facts at all in reference to running a passenger train, but only the expense connected with the passenger traffic; that is how much you shall make out of the passengers you haul over it? I wish to confine it to the real cost. Put in your cost, if you choose, of the injury to the track and all those matters, but I wish to confine it to the cost per mile of hauling passenger and freight trains, making an allowance for the greater speed and injury to the rails, if you choose, but confine it to the real cost per mile of hauling a passenger and freight train?

A. Leaving those things out reduces the comparative cost of running passenger trains, but still leaves it larger than freight.

Q. You think so?

A. Yes, sir; on Western roads passenger earnings are about twenty per cent. of the total earnings and in New England roads——

Q. You are getting back now into the relative expense of the whole thing; I don't ask whether they make or lose by carrying passengers, but the cost to the railroad of running passenger
1531 and freight trains; you stated that the route over which the
St. Louis, Iron Mountain runs is sparsely settled, and you stated that the cost is greater for a sparsely-settled country in running a road?

A. The cost per train.

Q. Now, I ask if your estimate and the result you have stated in comparison to the roads where it runs in more thickly-settled country is not based on the assumption that the charges on both roads are the same per mile for the same freight?

A. It would be largely so; but the rates are not proportionately greater in a sparsely-settled country.

Q. Are not proportionately greater?

A. No, sir.

Q. Can you state that as a fact in relation to the charges on the St. Louis, Iron Mountain & Southern?

A. I don't know what the Arkansas rates are; in Missouri they are limited—passenger rates—to three cents a mile; and on the New York Central the charges are two, and they are lined with cities, and trains fill up and discharge every time they stop; but in Missouri we are limited by law, and certainly a good deal more sparsely populated; I don't know what the Arkansas rates are now, I think about the same; so rates in this country are not proportioned to the sparsely-settled country, particularly in Arkansas; about seventy-eight per cent. of the line in Arkansas, I think, was through timber when they opened—some three hundred miles.

Q. What it is now you don't know?

A. No, sir; I don't know.

Re-examination by Col. **Broadhead**:

Q. I understand you to say in your cross-examination the total cost to the railroad company is greater on a passenger train than on a freight train, all things being taken into consideration?

A. That is what I mean; yes.

1532 Q. What do you call local traffic on your road?

A. As distinguished from traffic to or from either terminus of the road.

Q. Is the local traffic on the road considered profitable to the company?

A. Yes, sir; it usually is.

Q. And the more densely populated the country is the greater the local traffic?

A. Yes, sir.

Q. Business being increased, the road can afford to do it for less money than they can for a smaller amount?

A. Yes.

Q. You spoke of a controversy between the Missouri Pacific and the North Missouri, in which it was claimed the company had the right to send a reasonable distance for their freight; what did you consider a reasonable distance at that time?

A. In that case we considered the distance equivalent to the distance to the Pacific depot.

Q. The distance from where?

A. In excess over that distance.

Q. From what point?

A. From a man's store; if he was half a mile from the Pacific depot we told them they might go to a point within half a mile of him, and take it to their depot if they chose.

Q. The Pacific claimed the right to fix what was the reasonable distance?

A. In other words, their distance was the distance.

Q. Is that point settled?

A. It has ceased to be a question here, because they moved down town; but it arises in other cities; that question has been brought up between the roads in and out of Chicago; you have seen accounts of it this winter.

Q. I am asking about the custom in that particular; I am not confining it to St. Louis, but other places in the country that you are familiar with?

1533 A. Roads occasionally do the hauling or carrying of freight; they go after it from the depots in cases of long distance from points of shipment.

Q. Is that claimed to be a right that they have under their franchise as a railroad company?

(Objected to.)

A. I don't know what rights they have under their franchises.

Q. I will ask you about the custom; you say the custom has been to send for freight in some instances where it was necessary for the business of the road?

A. I said roads did so occasionally, and do now; I know of instances where they do now.

Q. How was it in regard to roads that terminated on the other side of the river before the building of the bridge and the Union Depot; how was the freight delivered when it was consigned to St. Louis?

A. If it was consigned to St. Louis it was delivered here, but usually it was consigned to East St. Louis, I think, then, and they made a rate; but if it was consigned to St. Louis they delivered it here.

(Signature waived.)

I certify that the foregoing is a true and faithful transcript of my short-hand notes of the testimony of the witnesses for the defendant in the above-entitled cause, taken by me as special examiner.

L. L. WALBRIDGE,
Special Examiner.

St. Louis, May 16, 1881.

1534 UNITED STATES OF AMERICA,
Eastern District of Missouri, } *ss:*

In the Circuit Court of the United States in and for said District.

Be it remembered that on the 15th day of February, A. D. 1881, there was filed in the office of the clerk of the circuit court of the United States in and for the eastern district of Missouri a certain stipulation as to testimony in a case entitled

SOUTHERN EXPRESS COMPANY
vs.
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY. } 1667.

Said stipulation is in words and figures following, to wit:

Stipulation.

United States Circuit Court, Eastern District of Missouri.

THE SOUTHERN EXPRESS COMPANY
against
THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY.

1535 It is hereby stipulated between the parties hereto as follows, to wit:

The depositions of Henry S. Haines, Is*ia*ah C. Babcock, James C. Fargo, James M. Thompson, Frederick Lovejoy, Austin Baldwin, Alonzo H. Taylor, Philip H. Monahan, Henry V. Poor, George S. Coe, William L. Hubbell, Henry L. Harrison, and M. J. O'Brien, and the exhibits in said depositions referred to or thereto annexed, taken at the city of New York before Joseph Gutman, Junior, examiner, on behalf of the complainants in the suit pending in the circuit court of the United States for the district of Kentucky, between William B. Dinsmore, as president of the Adams Express Company, &c., and the Louisville, Cincinnati, and Lexington Railway Company, or any or either of them, or copies thereof, may be filed in the above-entitled cause, and read by the plaintiff therein, upon the trial of said cause, with the same force and effect as if taken herein in pursuance of a commission or appointment, and notice issued and served in this cause for that purpose, subject, however, 1536 to all legal objections and exceptions to the competency and relevancy of the evidence contained in said depositions or exhibits, or any or either of them, or any part or portion thereof, save on the ground of any question being leading.

2d. The complainants agree to serve three printed copies of the said depositions and exhibits on the defendant's solicitors at least twenty days before the trial of this suit, and also to file a printed copy of the same with the clerk of this court at least ten days before the trial of this suit. The copy of said depositions to be filed shall be sufficiently certified under the certificate and seal of the clerk of the United States circuit court for the district of Kentucky, the court wherein the originals of the aforesaid depositions are to be filed.

3d. The witness, M. J. O'Brien, is to be produced by the complainants herein for further cross-examination if the defendants so elect, such election to be signified in writing to the complainant's solicitors within five days after service on the defendant's solicitors of the printed copies of the aforesaid depositions. The time and 1537 place for such further cross-examination to be fixed by the defendant's solicitors upon ten days' notice to the complainant's solicitors. Should the complainant's solicitors fail to produce the said M. J. O'Brien for further cross-examination, in pursuance of the election of the defendants so to be made as aforesaid, then no part of the said deposition of the said O'Brien can be read in evidence in this suit.

To be signed in duplicate.

Dated New York, Sep. 10, 1880.

F. E. WHITFIELD,
Sol. for Compl'ts.
THOROUGHMAN & PIKE,
For D'f't.

Attached to said stipulation was a letter, in words and figures following, to wit:

OFFICE OF GLOVER & SHEPLEY,
ST. LOUIS, *Feb'y* 10, 1881.

Hon. S. T. GLOVER.

DEAR SIR: By this I acknowledge the service by your 1538 hands of the copies of the printed record in Dinsmore case *vs.* The Louisville, C. & I. R'y Co., as per the existing agreement therein.

And, in accordance with another provision of said agreement, I hereby give you notice that we will require the production of M. J. O'Brien, Esq., for our cross-examination in the matters all ready testified concerning by him.

Very truly, &c., THOS. THOROUGHMAN.

N. B.—We waive the filing of a copy of the said evidence in the above-named cause, and agree that the same may be used as per said written agreement in the case of the Southern Express Co. *vs.* The St. Louis, Iron Mountain & Southern Railway Company, without the formality of the clerk's certificate thereto, a copy of said printed record to be filed with the clerk, without a certificate from the clerk of the Kentucky court.

THOROUGHMAN & PIKE &
J. O. BROADHEAD,
For Def'ts.

1539 In accordance with stipulation hereto attached, the following depositions were filed in the case of the Southern Express Co. *vs.* St. Louis, Iron Mt. & S. R'y Co.:

Circuit Court of the United States for the District of Kentucky.

WILLIAM B. DINSMORE, AS PRESIDENT OF THE ADAMS EXPRESS COMPANY,
vs.
THE LOUISVILLE, CINCINNATI AND LEXINGTON RAILWAY COMPANY.

Depositions taken on the part of the complainant in the above cause under and pursuant to the annexed commission and notice.

NEW YORK, *August* 24, 1880, 11 A. M.

Present: C. A. Seward, Esq., and F. E. Whitfield, Esq., counsel for complainant, and A. Barrett, Esq., counsel for defendant.

Counsel for complainant offered in evidence the law of the State of New York, passed April 7, 1849, entitled "An act in relation to suits by and against joint stock companies and associations," and also a like act, passed July 9, 1851, entitled "An act to extend the act in relation to suits by and against joint stock companies and associations to companies having a joint or common interest in property," as the said two acts are set forth in paragraph V of the bill of complaint herein.

Complainant calls as a witness ISAIAH C. BABCOCK, who, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by Mr. SEWARD, counsel for complainant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

1540 A. My name is Isaiah C. Babcock; I am 58 years of age; I reside in Orange, N. J.; I am treasurer of the Adams Express Company.

Q. 2. How long have you been connected with that company?

A. Since its organization in 1854.

Q. 3. Are you generally familiar with its business?

A. Generally, yes.

Q. 4. In what business has that company been engaged during that time?

A. In serving the public generally.

Q. 5. In what way?

A. In the transportation of merchandise, packages, money, etc.

Q. 6. Has it any other business than that?

A. No other.

Q. 7. Has it any office for the distribution of packages of express matter in the State of New York?

A. No other, I think, than in this city.

Q. 8. Does it receive in the city of New York any property for transportation to be delivered within the State of New York?

A. No; it does not.

Q. 9. To what points, speaking generally, is the property delivered at the company's office in the city of New York destined?

A. Our southern and western business is sent from here to Philadelphia, and from thence west and south to the principal cities and towns through Pennsylvania, Ohio, Indiana, Missouri, Kentucky, Virginia, Tennessee, Maryland, and the different States, and east as far as Boston, through Connecticut, Massachusetts, and Rhode Island.

Q. 10. Is the company engaged in any way in doing a local express business in the State of New York?

A. It is not.

Q. 11. Is it there engaged in the transportation of any other property than such as is going from one State to another?

1541 A. Only in such property as goes through the State to other points.

Q. 12. Its business, then, is that of inter-State transportation, is it not?

A. Yes, sir.

Q. 13. Please state what instrumentalities are employed by the Adams Express Company in the conduct of its business, and to what extent they are so employed.

A. We employ or run over about 157 different railroads—155 railroads, 11 steamboat lines, and 9 stage lines. Those in the Eastern States are in Massachusetts, Connecticut, and Rhode Island, and in the State of New York, the New Haven railroad, New Jersey, Pennsylvania, Maryland, Delaware, Virginia, West Virginia, Ohio, Indiana, Illinois, Missouri, Kentucky, some part of Tennessee.

Q. 14. Can you give an approximate statement of the number of offices which the express company has?

A. We have about 3,000.

Q. 15. Can you state the number of employés and the number of miles traveled by the express messengers—for illustration, during the year 1879?

A. We have nearly 4,300 men employed; we have run over 21,216 miles of railroad in 911 daily trips, making a daily run of 64,505 miles; annually, nineteen million eight hundred and eighty-four thousand and eight hundred and twenty miles.

Q. 16. Have you a general knowledge of the aggregate number of packages which have been received on any one day at the New York office for transportation by the express company?

A. We have received on many days fully 14,000 packages a day at our New York offices, and transmitted them.

Q. 17. Can you state the annual amount of compensation paid by the express company to its employés?

A. In 1879 we paid $1,568,730.

Q. 18. And how much during that year to the railway, steamboat, and stage companies, for services rendered?

A. $2,093,412.

Q. 19. Has the express company purchased for use in the
1542 transaction of its business any real estate? If so, where and
to what amount generally?

A. The company owns real estate in Boston, New Haven, New York, Jersey City, Philadelphia, Baltimore, Washington, Pittsburg, St. Louis, in all amounting to about $2,480,000 cost.

Q. 10. Has such property any other use than for service in the conduct of the express business?

A. It had no other use when purchased, but some of it has since been relinquished.

Q. 21. Can you state the number of horses and wagons employed by the express company?

A. Nine hundred and forty-eight horses, and six hundred and seventy-five wagons.

Q. 22. Is the business of the express company limited to the transportation of goods, wares, and merchandise from one railway station to another railway station?

A. No; we are not limited to that by any means.

Q. 23. Does the express business of the company include the doing of other things for the public beyond the mere transportation in railway cars of goods, wares, and merchandise from one railway station to another?

A. It does include other business, such as the collection of notes, bills, drafts, cheques, C. O. D.'s of packages—collecting on delivery of the package, and return of the money to the shipper—also the transportation of documents, papers, bills of lading, carrying money of all sorts and description.

Q. 24. Does it ever, in the case of the delivery of bills or notes for collection, include any other duty in reference thereto, if such bills and notes are not paid?

A. It includes the protesting of bills, notes, etc., where so directed.

Q. 25. In the case of a shipment of property of any kind, going, for illustration, from New York to St. Louis, does the express company issue a receipt to the shipper covering the entire transportation?

A. The receipt covers the transportation all through.

1543 Q. 26. Can you give an approximate amount of money carried by the Adams Express Company for the public generally during any one year?

A. In 1879 we carried one thousand and fifty millions for individuals and the general public.

Q. 27. Is the Adams Express Company employed by the Government of the United States, or any department thereof, for the transportation of Government moneys or securities?

A. We are by the Treasury Department.

Q. 28. Can you state what amount the Adams Express Company has carried during any one year for the Government of such moneys and securities?

A. In 1878 we carried one thousand two hundred millions; in 1879 six hundred and sixty-one millions.

Q. 29. Is the Adams Express Company still and now employed by the Government in the transportation of its moneys and securities?

A. It is.

Q. 30. Has the Government or the Treasury Department ever notified the public in any way, and, if so, how, that the public could use the Adams Express Company as its vehicle of transportation between itself and the Government?

A. They have done so by circulars issued by the Treasury of the United States.

Q. 31. Will you please produce and annex to your deposition copies of such circulars as you have referred to?

A. Yes; I herewith produce the same, and they are marked October 1, 1866; No. 1, January 10, 1867; No. 2, November 22, 1870; No. 1, January, 1872; No. 2, March 16, 1872; No. 6, July 1, 1873; No. 11, July 1, 1874; No. 13, April 8, 1875; No. 157, October 4, 1876; No. 20, February 1, 1877; No. 66, May 24, 1877; No. 21, November 15, 1877; No. 29, July 1, 1879; No. 30, August 15, 1879; and I annex them to my deposition.

Q. 32. Has not the Adams Express Company contracts or understandings of some sort with the various railroad, steamboat, and stage companies of which you have spoken for the conduct of the express business, and the affording the usual and necessary facilities therefor by such companies?

A. They have.

1544 Q. 33. You personally have not represented the express company in making such contracts, or arriving at such understandings with such railroad, steamboat, and stage companies, have you?

A. No.

Q. 34. Have you, as an officer of the company, any of such contracts under your control?

A. I have some.

Q. 35. Will you please state with what companies such contracts are, and upon what terms as to compensation to be paid by the express company for the necessary and usual facilities.

A. With the New York and New England railroad, from April 1, 1880, for five years, between New York and Boston, for $110,000 per annum for one car daily between Boston and New London, both ways, and equivalent space on steamboat between New London and New York; and if a second line is run between Boston and New York via Allyn's Point, the express company to be allowed 1,280 cubic feet of space in car between Boston and Allyn's Point, and equivalent space on steamer between Allyn's Point and New York; also, 1,280 feet of space in baggage car daily between Worcester and New London, and equivalent space on steamboats between New London and New York; also, 1,280 cubic feet of space between Boston and Hartford by Washington night express, exclusive of space used for Boston and Philadelphia through business; also, one car each way daily between Boston and Providence, in addition to the space heretofore allowed on three other trains, each way daily, between said points; also, 960 cubic feet of space in the baggage cars of all other trains now run, or hereafter to be run; also, privilege to transport and sell newspapers and periodicals on trains and at stations, the express officers, messengers, and newsboys to be carried free, and the express company to indemnify railroad against loss or damage of or to express matter. With the Cincinnati Southern railroad, between Cincinnati and Chattanooga, a contract for the usual express facilities upon the payment to the railroad company of forty per cent. of the gross receipts of the express company, officers
1545 and messengers to be carried free, with the usual indemnity
clause. With the Western Maryland Company, from Baltimore to Hagerstown, at a compensation of twenty-five cents per one hundred pounds, to and from and between any point or points up to and including Mechanicstown, officers and messengers to be carried free, with the usual contract for indemnity. With the Seaboard and Roanoke Railroad Company, from Portsmouth, Va., to Weldon, N. C., for a compensation to be paid by the express company on

general merchandise, fruits, and vegetables of thirty cents per one hundred pounds, oysters in shell, thirty cents per barrel; shucked oysters in barrels, fifty cents per barrel; half barrels, thirty cents; quarter barrels, twenty cents. With the Chesapeake and Ohio Railroad Company, from Richmond, Va., to Huntington, W. Va., for $2,500 per month for half car load, not exceeding 7,500 pounds, on two trains each way daily, between Richmond and Huntington, and one train each way daily between Richmond and Gordonsville; if more space is required a full car is to be placed at the disposal of the express company for $21 a trip between Richmond and Covington and White Sulphur Springs; $37 per trip between Richmond and Huntington, and $6 per trip for each one-quarter car between Richmond and Gordonsville, officers and messengers to be carried free, and the usual clause for indemnity. With the Emmetsburg Railroad Company, a short branch road in Maryland, for ten cents per one hundred pounds between any points, officers and messengers free, usual indemity clause. With the Shenandoah Valley Railroad Company, from Hagerstown, Md., south about sixty miles, for forty per cent. of gross receipts, officers and messengers to be carried free, and usual indemnity. With the Atchison, Topeka and Santa Fe Railroad Company, a space of twelve feet by nine feet per day in car on one train per day over the road in each direction, officers and messengers to be carried free, for $3,125 per month, and usual indemnity. With the Pennsylvania railroad and the Pennsylvania Company, for forty per cent. of the gross receipts, officers and messengers to be carried free, and usual indemnity.

Q. 36. Has the Census Department made any requisition
1546 upon the Adams Express Company, or any of its branches,
for any information or statistics with reference to the express business?

A. It has.

Q. 37. Will you please produce and annex to your deposition such notices?

A. I produce two of such notices, served upon the Adams Express Company, one marked 7–483, dated Washington, June 30, 1880, and the other marked 7–410, dated Washington, August 5, 1880, and I annex the same to my deposition.

Q. 38. I notice that the circular marked 7–483 is addressed to New York and Philadelphia New Line, etc. Is that a branch of the Adams Express Company?

A. It is one that they have some interest in.

Cross-Q. 39. Have you responded to the requisition of the Department of the Interior, just spoken of in the preceding answer?

A. No, sir.

Cross-Q. 40. Is that the response in course of preparation?

A. Not at present, to my knowledge.

Cross-Q. 41. Is it the intention of the company to respond?

A. I can't say, sir.

Cross-Q. 42. Do you or not know that the act of Congress under which this requisition is made applies only to incorporated express companies, and the Adams Express Company not being a corporation, there is no intention on the part of that company to furnish the desired information?

(Objected to.)

A. I know that we are not a corporation, and the article expressly states incorporated express companies.

Cross-Q. 43. How long since your company had notice as to the desire of the Census Bureau to have this information?

A. I think we got it about the 7th or 10th of August; I judge from the post-mark date.

1547 Cross-Q. 44. Do these two circulars contain all the information on the subject of the wishes of the Census Bureau of which you have knowledge?

A. They refer to blanks that they wish filled; that is all I know.

Cross-Q. 45. Are these the first circulars that have been received by the company from the census bureau or the Department of the Interior?

A. The first and only ones I have any knowledge of.

Cross-Q. 46. Have any steps been taken towards furnishing the knowledge required by the bureau?

A. Not by me, as yet.

Cross-Q. 47. Were you connected with the Adams Express Company at its organization in 1854; if so, in what position, and what positions have you held since that time in that company?

A. I have been cashier and treasurer.

Cross-Q. 48. What was its capital stock at its organization?

A. It had no capital stock.

Cross-Q. 49. Has it no capital stock now?

A. We don't call it capital stock.

Cross-Q. 50. By what name is it known?

A. The interests are divided into shares.

Cross-Q. 51. What was the estimated value of those shares at the date of its organization?

A. I could not tell you.

Cross-Q. 52. Are you a share-holder; if so, to what amount?

A. I have twenty-four shares in my name.

Cross-Q. 53. What do these shares now and what did they at the organization of the company represent?

A. They represent the undivided interest of each share-holder in the property of the company.

Cross-Q. 54. It is understood that at the organization of the company there were 12,000 shares of $100 each, and now 120,000 shares of $100 each, each of said shares being of the market value of $100. Explain by what process the number of shares was increased from 12,000 to 120,000.

(Objected to, as irrelevant and immaterial, and not founded on the examination-in-chief.)

1548 A. The increase was made by sundry stock dividends of shares at different times.

Cross-Q. 55. Has there ever been a time since the organization of the company up to the present at which large dividends out of net earnings were declared upon these shares in addition to the stock dividends?

(Same objection.)

A. There have been extra dividends made.
Cross-Q. 56. What has been the usual cash dividend?
A. For several years past they have been $8 a year annually.
Cross-Q. 57. What extra dividends have been declared?

(Same objection.)

A. None, for a number of years.
Cross-Q. 58. When was the last stock dividend declared?

(Same objection.)

A. In 1875.
Cross-Q. 59. How much was it?

(Same objection.)

A. Twenty per cent. in shares.
Cross-Q. 60. Have you in your possession or under your control a list of the share-holders of the Adams Express Co.; and, if so, will you annex such list to this deposition as a part of your answer, allowing it to show the names and residences of each stockholder, and the number of shares held by each?

(Same objection; and, further, that it is not in the power of the witness to do so, for the reason that no truthful list can be made at any one time, from the fact that the stock changes hands on each day, and that the matter inquired of is a part of the private business of the Adams Express Co. not in issue in this case. And the witness is instructed not to answer until the question with this objection has been passed upon by the court, and counsel for the plaintiff informs the counsel for the defendant that he will by to-night's mail send a copy of the question with the objection to the Hon. John Baxter, circuit judge, for his ruling thereon as to its admissibility, and until his decision thereon he instructs the witness not to produce any list.)

Cross-Q. 61. When was your last dividend day?

(Same objection.)

1549 A. Last June—June 1, 1880.
Cross-Q. 62. Have you a list of shareholders by which you paid dividends?
A. Yes.
Cross-Q. 63. Can you, and will you, furnish a copy of that list by which you last paid a dividend?

(Same objection, and instruction as to cross-question 60.)

A. I would not without the consent of the board or direction of counsel.
Cross-Q. 64. Will you permit an inspection of that list in order

that the residences of your share-holders may be developed in this case?

(Same objection, and instruction as to cross-question 60.)

A. Same answer as before.

Cross-Q. 65. Does any of your stockholders reside in the State of Kentucky, and so reside at the beginning of this suit, April 9, 1880?

A. I think not.

Cross-Q. 66. Has none of your stock been held at Louisville; and, if so, by whom?

A. I could not tell you now from recollection.

Cross-Q. 67. Does any railroad company hold any shares in the Adams Express Company; and if any, which?

A. No, sir.

Cross-Q. 68. Are any of your shares of stock held by persons controlling the lines of railroad companies? If any, say who.

(Same objection, and instruction as to cross-question 60.)

A. None that I am aware of.

Cross-Q. 69. Did the Adams Express Company ever do business in the State of New York outside of the city of New York in the way of receipt and delivery of parcels and packages at railway stations in New York?

A. No, they did not.

Cross-Q. 70. You have stated that in the year 1879 the company had 4,297 employés—what proportion of these are wholly employed in the business of the Adams Express Company?

1550 A. I imagine nearly all of them, if not all—they are men that receive pay from us.

Cross-Q. 71. Can you furnish a list of their names, residences, and branch of express business in which they were engaged?

A. No, sir; I don't think I could.

Cross-Q. 72. Would not a copy of the pay-roll furnish this information?

A. It might if it could be got together. Each office keeps its own.

Cross-Q. 73. Are or not returns in your possession showing the name, residence, and service rendered by each employé during the year 1879?

A. There are not.

Cross-Q. 74. Are not many of your employés also in the employ of railroad and steamboat companies and stage lines?

A. Very few, if any.

Cross-Q. 75. Do you or not employ in country towns and way stations the agents of railroad companies?

A. We do not make a practice of it.

Cross-Q. 76. Is it or not true that, at the bringing of this suit, at all the stations on the lines of the defendant's roads, except Lexington, Cincinnati, and Louisville, the station agent of the defendant was also the agent of the company?

A. I don't know anything about that.

Cross-Q. 77. How far is it, within your knowledge, that such station agents on the lines of other railway companies were also the employés of the Adams Express Company?

A. Well, I speak of what I hear from our folks east of Pittsburg. We don't make a practice of it. What they do farther west I don't know much about.

Cross-Q. 78. In your direct examination you said that in the year 1879 your company had paid employés $1,568,730; was this sum paid in money entirely, or in part by allowing commissions to agents at smaller stations?

A. Commissions would be the same as money. I consider it was all paid in money.

Cross-Q. 79. Were such commissions allowed and retained by the agent?

1551 A. I couldn't say, for I have nothing to do with settling those matters.

Cross-Q. 80. You have said that the Adams Express Co. owned $2,480,000 worth of real estate. Was this real estate bought and paid for out of the profits of the company, as also its horses and wagons, or has any new stock been subscribed for and paid for in money since the organization of the company?

A. It has been paid for out of the earnings of the company.

Cross-Q. 81. Does the Adams Express Company own any line of railway or of steamboats, or shares of capital stock in either, or the bonds of either?

A. They own no lines of railway nor steamboats, but they hold railway shares and bonds.

Cross-Q. 82. What proportion of the company's assets is in railway shares and bonds?

A. I cannot tell you from memory.

Cross-Q. 83. You have spoken of operating divers railways under contracts. Do you mean that these contracts were in writing?

A. Many of them—the most important.

Cross-Q. 84. Do you know, of your own knowledge, of any oral contracts with any company?

A. I do not.

Cross-Q. 85. Do you know of any instance in the United States where the Adams Express Company is operating any line of railway or steamboats, except under a written contract in which the details as to compensation and facilities are fully set forth?

A. I can't say from my own knowledge.

Cross-Q. 86. In operating the lines of a railway, does the Adams Express Company carry its matter by freight or passenger trains?

A. Generally by passenger trains, as far as my knowledge extends.

Cross-Q. 87. Why by passenger trains?

A. On account of time—they are more expeditious.

Cross-Q. 88. In fixing charges, does the Adams Express 1552 Company observe the rates charged by the railway company for the transportation of like articles?

A. That is out of my department; I don't know.

Cross-Q. 89. Is there anything in your office that will show the profits earned by the Adams Express Company upon the lines of the defendant at any stated period, and for the preceding year?

A. I don't know that there is.

Cross-Q. 90. Do you know any line of railway company in the United States upon which the railroad company is doing its own express business? If any, say which and what mileage is so operated.

A. I am advised of the Reading and Baltimore and Ohio. Their mileage I don't know.

Cross-Q. 91. Is that all you know of?

A. All I am positive about now.

Cross-Q. 92. Is there any connection between the Southern Express Company and the Adams Express Co.? If any, say what.

A. Only that we connect in business with each other.

Cross-Q. 93. Is that the only connection?

A. To my knowledge, it is.

Cross-Q. 94. Does the Adams own any shares of capital stock in the Southern Express Company?

A. No, sir.

Cross-Q. 95. Do you own any shares in the Southern?

A. No, sir.

Cross-Q. 96. Have you any list of the shareholders of the Southern Express Company in your office in whole or in part?

A. No, sir.

Cross-Q. 97. You said a while ago, in speaking of this census circular addressed to the New York and Philadelphia New Line, etc., at Boston, as I understood you, that the Adams had an interest in this new line; explain what that interest was.

A. I can't do it, sir.

Cross-Q. 98. How did you know that the Adams had any interest in such new line?

1553 A. I have heard it from people.

Cross-Q. 99. You have spoken of the value of articles carried by the Adams Express Company for the public and for the Government, and of the size of the pay-roll paid by the Adams Express; now, what proportion do these values and amounts bear to the values carried by railway companies in this country and the payrolls paid by them.

A. The amounts stated by me were money packages; I gave no value of freights carried. I couldn't give you any comparison of that kind because I don't know the railroad payments.

Cross-Q. 100. Do you have any knowledge or information as to the amount of stock owned by the stockholders in the Adams Express Company in other express companies, including the Southern? If so, state such knowledge and information.

A. I have none.

R. D. 101. You have been asked certain questions about the payments of dividends by the Adams Express Company. How many shareholders in round numbers are there in the Adams Express Company?

A. About twenty-five hundred.

R. D. 102. Is Wm. B. Dinsmore the president of the association?

A. He is, and has been since 1865, or thereabouts.

R. D. 103. Is he a share-holder therein?

A. He is, and has been since the organization in 1854. He resides in the city of New York, and has for forty years or more.

R. D. 104. In what States, so far as you know, do the other shareholders reside?

(Objected to, unless the record is produced.)

A. I think there are some in all the Eastern States, Maine, New Hampshire, Vermont, Rhode Island, Connecticut, Massachusetts, New York, Pennsylvania, Maryland, Delaware, Ohio, Michigan, Illinois, Missouri, Wisconsin.

R. D. 105. Are there any, to your knowledge, in any other States than those you have mentioned?

1554 A. I can't say; not to my recollection. We have none in Kentucky and Indiana.

R. D. 106. Are these share-holders jointly interested in the association?

A. They are, as in a partnership.

R. D. 107. Are the shares sold in open market in the city of New York?

A. They are.

R. D. 108. How often?

A. They are regularly called at the board every day, and sold very often.

R. D. 109. Are they transferred to the purchasers?

A. They are.

R. D. 110. Are such transfers always made on the day of the sale or are they sometimes applied for subsequently?

A. They are not always made on the day of the sale.

R. D. 111. If there is a record, as stated in the objection to R. D. Q. 104, of the share-holders in the Adams Express Company in your possession, did you not make such record as treasurer; or, if not, is it not made from information which you had before such record was made?

A. The cashier makes the record and I sign the checks as treasurer.

R. D. 112. Is Mr. Dinsmore a very large shareholder in the company?

A. He is.

I. C. BABCOCK.

Subscribed and sworn to before me.

JOSEPH GUTMAN, Jr., *Commissioner.*

(Counsel for the plaintiff advises the counsel for the defendant that he incloses to Judge Baxter copies of cross-questions 54, 60, 63, 64, and 65, with a letter asking him to return the inclosure with his rulings thereon shown, and that if the witness is directed to answer he will be produced for further cross-examination and answer.)

1555 TREASURY DEPARTMENT, *October* 1, 1866.

To all Collectors, Officers, or Agents of the Treasury Department Engaged Either in the Collection or Transfer of Moneys of the United States.

A contract having been entered into between the Treasury Department and the Adams Express Company for the transportation, over all the lines of the said Adams Express Company, and through them of the American, United States, Harden's, Howard's, Hope, Cheney's, Eastern, and Southern Express Companies, of all moneys under the control of the Treasury Department, you are hereby directed to employ said companies for the necessary transportation of all moneys of the Treasury Department; said transportation to be made for the purposes of depositing the money transported with the Treasurer, an Assistant Treasurer, or authorized depositary of the United States; for transmitting the moneys collected on account of internal revenue from deputy collectors of internal revenue to collectors or United States depositaries, and for special purposes, and under special circumstances, in accordance with instructions from the Department.

All moneys transmitted should consist of the sum of one thousand dollars, or its multiples, as near as possible, and should be sent by the shortest practicable routes. The expenses of transportation will be paid by the Department. The officers sending or receiving moneys will certify, in such form of vouchers as may be approved, to bills for the services rendered, stating the sum transported, between what points and to what office the moneys were sent, the date, and that the services charged for were actually performed.

All officers or agents are cautioned to carefully count and pack their moneys to be transported, securing them in strong packages, sealed with their own private seal in at least four places, and with the amount, their own name and title, and the name and title of the consignee plainly marked on the wrapper, taking receipts from the express companies for all sums transmitted.

H. McCULLOCH,
Secretary of the Treasury.

[No. 1. 1867.]

TREASURY DEPARTMENT, TREASURER'S OFFICE,
WASHINGTON, *January* 10, 1867.

The rules adopted for the redemption of fractional and other United States notes that, from whatever cause, have become unfit for circulation, contemplate and require the co-operation of all national banks that are designated depositaries in the work of redemption, except such notes as, by the rules of the Department, are designated and described as "mutilated," and by the term mutilated is meant notes not worth their full face value. Some of those banks do not seem to have understood, or have been unwilling to 1556 accept, this duty. Now, to furnish to holders of money which ought to be retired from circulation more ample means for the redemption or exchange of defaced U. S. notes and fractional currency, and such notes as by said rules are defined as "mutilated," and subject, therefore, to discount at the Treasury, the following additional rules and regulations have been adopted:

Whenever a holder of any U. S. currency shall present to an Assistant Treasurer of the United States, United States depositary, or a national bank which is a designated depositary of the United States, notes which in the aggregate shall be of the nominal value of fifty dollars, or over, which notes shall have been carefully assorted, strapped, labeled, and then put up in one parcel, in conformity with with the rules approved by the Secretary of the Treasury April 21, 1865, for the redemption of such notes, it shall be the duty of such officer or bank to receive such parcel of notes, and give to the owner thereof either the value of the same in money or a receipt, conditioned for the payment of the proceeds of such parcel when returns therefor shall have been received from the Treasurer of the United States. Such parcel must be securely done up, with the owner's name, the amount claimed, and the date plainly written thereon. The officer or bank remitting such parcels will make them into packages containing as near one thousand dollars, or its multiple, as may be, and write upon such packages the name of the bank or person remitting, and the amount contained therein, and state on the outside of each package, "Forwardad under contract with Adams Express Company," which packages should be addressed to the "Treasurer of the United States, Washington, D. C." In making up these packages, care must be observed to remit sums representing thousands; and amounts much less than $1,000 should be avoided, because the contract for transportation establishes prices by the $1,000, and the cost of carrying $1,001 under that contract would be double the cost of conveying $1,000. Packages must be delivered for transmission to the Adams Express Company, or to such express companies as shall have formed connections with the Adams Express. Returns will be made for the value of remittances as soon as the notes can be counted at the Treasury, either by check on New York, Boston, or Philadelphia, or in new notes sent by express, free of charge, as the party remitting may elect. Straps in which errors have been discovered will be returned, with the errors and counterfeits noted thereon.

By this plan large sums can be sent to the Treasury for redemption without the labor of counting by intermediate agents of the Treasury, and without cost to holders; but officers and banks whose duty it is under existing rules and instructions will continue to redeem small sums of currency at their counters whenever they have Government funds in their hands.

Under these regulations, any public officer, bank, corporation, firm, or individual may also send to the Treasurer of the United States, by express, packages of currency for redemption, free of expense to the owner, by observing carefully and strictly all the instructions herein contained, so as to bring the cost of transit
1557 within the contract of the Department with the Adams Express Company; and by following the rules before mentioned for assorting, strapping, and labeling the parcels composing pack-

ages. All mutilated currency, subject to discount, sent to the Treasury for redemption, should be placed in separate parcels and marked "mutilated." It will be greatly to the interest of parties remitting mutilated currency, which has been torn into two or more pieces, to restore the form of such mutilated notes as near as may be, by pasting the fragmentary parts of each of the respective notes on slips of paper of the size and form of the original notes. But all piecing or mending of mutilated currency with fragments of other notes is prohibited; and no allowance will be made for such fragments that have been used for piecing, as do not constitute portions of one original note, in ascertaining the value of mutilated notes at the Treasury. No national bank notes, whether mutilated or not, are redeemable by the Treasurer, unless they are the notes of banks in liquidation; such notes are redeemable only by the banks which issued them.

The best method to prepare money for transportation to the Treasury is to make of all the assorted notes one compact package, sealed or neatly tied together, and then to place such package, with an open and separate letter of advice, in another envelope or wrapper which is to be sealed and addressed to the Treasurer. It is essential that a letter accompany each remittance of currency sent to the Treasury for redemption. Such letter should contain, in plain characters, the name of the owner or person to whom return for the money is to be made, the name of the post office and State, and the amount of the whole remittance. Letters of advice should be written upon paper not less than a half sheet of commercial note, that they may be filed. Correspondents are hereby informed that all parcels and packages of currency received at the Treasury without a letter of advice will be retained until such letter shall have come to hand.

Printed copies of the rules and regulations in force for the redemption of U. S. currency can be obtained on application to the Treasurer.

It is not advisable to send parcels of money to the Treasury by mail; but those who choose to incur that risk need not pay postage on parcels so forwarded to this office for redemption, as all communications by mail addressed to the Treasurer U. S., Washington, D. C., will come free under the law.

F. E. SPINNER,
Treasurer U. S.

TREASURY DEPARTMENT,
WASHINGTON, *January* 10, 1867.

The foregoing rules and regulations are hereby approved.

H. McCULLOCH,
Secretary of the Treasury.

1558 [Number 2, 1870.]

TREASURY DEPARTMENT, TREASURER'S OFFICE,
WASHINGTON, *November* 22, 1870.

Amended Regulations Governing the Distribution of "United States Notes, Series of 1869," and New Fractional Currency.

I. UNITED STATES NOTES, SERIES OF 1869.

The Department having now on hand a supply of United States notes, series of 1869, sufficient for the purpose, is desirous of issuing them in lieu of United States legal-tender notes of former issues remaining in circulation, all of which, whatever their condition, it is desired to retire. To secure this end, the following regulations are hereby adopted, in lieu of those upon the same subject contained in circular number 1, 1870. Attention is particularly invited to Regulations 1, 7, and 8, as herein amended:

1. Holders of United States notes of former issues will be permitted to forward them by express to the Treasurer for redemption, at the expense of the Department, under the Government contract with Adams Express Company, from any point within the territory embraced within the terms of that contract, in sums of $500 or more, but not exceeding $1,000, or an even multiple thereof by less than $500. Returns will be promptly made in all cases upon the completion of the counting of the notes to be retired, either in new notes of the series of 1869, or new fractional currency, forwarded by express at the expense of the Department; or in checks on Boston, New York, Philadelphia, or New Orleans, as may be requested. When returns are made in new notes, of the series of 1869, they will be forwarded only to the parties from whom the old notes have been received.

2. Assistant treasurers and designated depositaries of the United States, other than national banks, whose offices are situated within the territory covered by the Government contract with Adams Express Company, will forward to the Treasurer, for exchange for new notes of the series of 1869, or for credit in account, as may be requested or required by the condition of their accounts, all United States notes of former issues now in their custody, or which may hereafter be received by them. In case, however, this course would, in any instance, be likely to reduce the Treasurer's balance too greatly, a remittance of the new notes will be forwarded from this office, upon requisition therefor, in advance of the receipt of the old notes.

3. Assistant treasurers and designated depositaries, in reporting, in their statements of liabilities and assets, the United States notes, series of 1869, and national bank notes on hand, and in making requisitions for new notes, will observe the following classification: $500 and $1,000 notes will be classified as "large" notes; $50 and $100 notes as "medium;" $5, $10, and $20 notes as "small," and $1 and $2 notes as "ones and twos."

1559 The aggregate of United States notes of former issues on hand will be reported separately in one item, as "United States notes of old issues."

4. Assistant treasurers and designated depositaries and national banks designated as depositaries, will redeem in notes of the series of 1869, whenever they have a sufficient supply on hand, all United States notes of former issues, not so mutilated as to be subject to discount, presented to them for that purpose.

5. National banks designated as depositaries are requested to forward to the Treasurer, in proper amounts for redemption, exchange, or credit, as they may desire, United States notes of former issues received by them on Government account, whenever they can do so without embarrassment to their business.

6. The new notes will continue to be sent, at the expense of the Department as heretofore, when desired, in exchange for defaced and mutilated fractional currency, and for circulating notes of national banks which have failed or gone into voluntary liquidation, subject to the above restrictions as to the amounts of the remittances.

7. Hereafter new notes will not be forwarded from this office in return for certificates of deposit issued by assistant treasurers and designated depositaries of the United States, as provided in circulars number 8, 1869, and number 1, 1870.

8. Hereafter new notes will not be forwarded from this office in return for bankers' drafts, as provided in circular number 1, 1870.

II. Fractional Currency.

New fractional currency will be forwarded by express from the Treasurer's office, under the Government contract with Adams Express Company, to any point within the territory covered by that contract, at the expense of the Department, on the following terms, viz:

1. In return for defaced and mutilated fractional currency, and United States notes of the series of 1869; United States notes of former issues, whether mutilated or not; and notes of national banks which have failed or gone into liquidation, forwarded to the Treasurer for redemption in sums of $500 or more, but not exceeding $1,000, or an even multiple thereof by less than $500;

2. On the receipt of original certificates of deposit to the credit of the Treasurer of the United States, issued by the assistant treasurers and designated depositaries of the United States, and national banks designated as depositaries, for even thousands of dollars; and—

3. On the receipt and collection of drafts on banks and bankers in Boston, New York, Philadelphia, and Washington, for even thousands of dollars.

In the last two cases, if the amount applied for is less than $1,000, the charges thereon at contract rates will be deducted; if less than an even multiple of $1,000, the charges on the fractional part of $1,000 included in the amount will be deducted.

1560 III. THE GOVERNMENT CONTRACT WITH ADAMS EXPRESS COMPANY.

1. The Government contract with Adams Express Company extends to and includes all "points accessible through established express lines reached by continuous railway connections" within the United States, but does not extend beyond St. Paul, Minnesota, in that direction.

2. The restrictions as to the amounts of remittances which may be made at the expense of the Department under this circular have been prescribed for the reason that any fraction of $1,000 forwarded under that contract is charged as $1,000. Any expense to which the Department may be subjected, through non-observance of these restrictions, will be deducted from the remittances.

3. All packages forwarded under the contract should be plainly marked, "Forwarded under Government contract with Adams Express Company."

F. E. SPINNER,
Treasurer U. S.

[Circular Number 1.]

TREASURY OF THE UNITED STATES,
WASHINGTON, *January* 2, 1872.

Redemption of United States Currency.

The following regulations are adopted in lieu of all which have been heretofore issued by the Treasury Department, governing the redemption of United States currency:

I. DEFACED AND MUTILATED CURRENCY.

1. All regulations heretofore in force, subjecting mutilated currency of the United States to discount on redemption thereof, are hereby abrogated; but no claim for refunding discount heretofore withheld will be entertained.

2. Defaced and mutilated fractional and legal-tender notes, each equaling or exceeding by face measurement three-fifths of its original proportions in one piece, will, if in such a condition that their genuineness can be clearly ascertained, be redeemed at the full face value of whole notes, in new notes or currency, by the Treasurer, the several assistant treasurers, and designated depositaries of the United States, and all national banks designated as depositaries, and will also be received at their full face value by all officers of the Treasury Department in payment of all currency dues to the United States.

3. The officers and national bank depositaries, by whom such currency shall be redeemed or received, will not use it in their disbursements, but may forward it to the Treasurer of the United States at Washington, at the expense of the Department under the Government contract with the Adams Express Company.

4. The course prescribed in sections 2 and 3 will be pursued by

the above-mentioned officers and banks in redeeming, receiving, and forwarding to the Treasurer, for retirement legal-tender notes of issues prior to 1869, whether defaced or mutilated or not,
1561 provided only that they be not mutilated beyond the extent above specified.

5. Officers of the Government, other than assistant treasurers and depositaries, will be permitted to present the notes and currency received by them directly to an assistant treasurer, depositary, or national bank depositary for redemption, if they shall prefer that course to forwarding them to the Treasurer; but no express charge will be paid by the Department except for remittances directly to the Treasurer.

6. Whenever the amount presented for redemption at any one time by the same holder to an assistant treasurer, depositary, or national bank depositary shall equal or exceed fifty dollars in legal-tender notes, or five dollars in fractional currency, it shall be optional with such officer or bank to either pay the owner its value in money, or give a receipt conditional for such payment when proceeds of the parcel shall have been received from the Treasurer of the United States. When the same person shall habitually present for redemption currency in sums somewhat less than those mentioned, with the evident intention of evading this regulation, it shall be discretionary with the officer or bank to whom the currency shall be presented to refuse to receive it until it shall have been made up to the amount above designated.

7. The Department will receive, at its own expense, under the contract with Adams Express Company, from any person, company, firm, bank, or corporation, legal-tender notes or fractional currency which are defaced or mutilated, or in any way unfit for circulation, and legal-tender notes of issues prior to 1869, whether defaced or mutilated or not, provided that the fractional currency be sent in sums of five dollars and upwards, and the legal-tender notes in sums of fifty dollars and upwards.

II. Fragmentary Notes.

Fragments of legal-tender notes and fractional currency, constituting less than three-fifths of the original proportions of the notes, will be redeemed on the following terms by the Treasurer of the United States, and by no other officer.

1. Fragments of legal-tender notes and fractional currency, constituting less than half of the original proportions of the notes, will be redeemed only when accompanied by affidavit that the missing portions of the notes have been totally destroyed. The affidavit must state the cause and manner of the mutilation, and the character of the affiant must be certified to be good by a magistrate or other public officer. When accompanied by satisfactory proof, such fragments will be redeemed for the full face value of the notes of which they are part.

2. Fragments, each less than one-half, but together purporting to constitute more than one-half of a note, will be redeemed only

when it shall appear, either from the fragments themselves or by
affidavit made in conformity to the foregoing paragraph, that they
are actually parts of one original note. The Treasurer will
1562 exercise such a discretion under this paragraph as may seem
to him needful to protect the United States from fraud.

3. Entire pieces, containing half or more than half, but less than three-fifths of notes, will be redeemed for but half of the full face value of the notes, except when accompanied by an affidavit made in conformity to paragraph 1.

4. Half notes that have been punched will in no case be redeemed.

5. Counterfeit notes will be branded and returned. Unredeemed fragments less than half will be retained.

III. FRACTIONAL CURRENCY.

1. Fractional currency, before being presented or forwarded for redemption, must be assorted into the different issues—which are easily distinguished; each issue must be assorted by denominations and inclosed in paper straps at least one inch wide, securely pinned; each strap, if the size of the deposit or remittance will admit, must contain one hundred notes of the same denomination; and on each strap must be written with ink the number of pieces and denomination inclosed, and the name of the owner.

2. The entire deposit or remittance must be securely done up in one package, and upon the wrapper the date of deposit or remittance, the amount inclosed, and the name of the owner, must be written with ink.

3. Packages, other than those on Government account, will be paid for in the order as to time in which they shall have been received, as soon as the currency can be counted and passed upon, in lawful money of the United States, unless otherwise requested, in which case returns will be made as provided for in section V.

MODE OF TRANSMISSION TO TREASURER.

When parties making remittances fail to give their full names and post-office addresses, including the State, the remittances will be retained until such addresses shall be furnished, accompanied by satisfactory descriptions of the packages claimed.

An inventory, describing the contents by parcels, denominations, and amounts, should accompany every remittance.

BY EXPRESS.

1. Direct all remittances intended for redemption to "Treasurer of the United States, Washington, D. C."

2. Packages should be put in wrappers of stout paper or cloth, tied with stout twine, secured with careful sealing, and plainly marked on the outside with the amount and nature of the contents, the full name and post-office address, including the State, of the

consignor, and the fact that they are forwarded under the Government contract with Adams Express Company, thus:

$——. Mutilated currency for redemption under contract with
Adams Express Company.
TREASURER OF THE UNITED STATES,
Washington, *D. C.*
From JOHN SMITH, *Smithville*, *O.*

1563 3. A letter of advice, written on not less than half a sheet of commercial note paper, stating the name and full post-office address of the owner, the amount of the remittance, and the manner in which returns shall be made, must be put inside the package, and a duplicate letter should be sent by mail to the Treasurer on the day that the remittance is forwarded.

4. Fractional currency may be sent to the Treasurer for redemption at the expense of the Department by Adams Express Company, or any of the express companies mentioned below in sums of five dollars and upwards. Legal-tender notes may be sent in like manner in sums of fifty dollars and upwards. Parties remitting currency for redemption, and especially officers of the Department, are, however, requested to make their remittances as large as practicable, and when possible to remit in sums of $1,000 or an even multiple thereof. Remittances of fifty dollars and upwards may be composed in part of fractional currency and in part of legal-tender notes.

5. The Government contract with Adams Express Company extends to and includes all "points accessible through established express lines, reached by continuous railway connection," within the United States, but does not extend westward beyond Omaha and Nebraska City, in Nebraska, and Atchison and Leavenworth, in Kansas, nor include the lines of Wells, Fargo & Co., in Missouri and Iowa. The contract covers the lines of the following express companies: Adams, American Merchants' Union, Central, Earl, Eastern, Harnden, Hope, Howard, National, New Jersey, Southern, United States, and United States and Canada. Remittances can be made by express, at the expense of the Department, only from points within the territory covered by the contract.

BY MAIL.

1. Direct all remittances intended for redemption to "Treasurer of the United States, Washington, D. C." Letters or packages so addressed or delivered by mail, postage free, whether they contain money or not.

2. Money for redemption, after being prepared as hereinbefore directed, should be sealed or tied up in paper of suitable strength, and plainly marked on the outside with the owner's name and full address, and with the amount inclosed. The package should then be sealed up in an envelope, together with a letter of advice, written on not less than half a sheet of commercial note paper, stating the

name and full post-office address of the owner, the value of the remittance, and the manner in which return shall be made.

3. Remittances to the Treasurer by mail are invariably at the risk of the owners. All communications to the Treasurer in regard to packages ascertained to have been lost in transmission by mail will be referred for investigation to the Second Assistant Postmaster General, to whom any further inquiry on the subject should be addressed.

1564 4. It is a protection against loss to register letters containing money; but the registry fee must in all cases be prepaid by the party remitting.

V. RETURNS—HOW MADE.

1. Returns for amounts less than five dollars will, unless instructions be given to remit proceeds by check, be made in new currency, by mail, at the owner's risk, or, if requested, by express, at his expense.

2. Returns for amounts of five dollars and upwards, received by mail, will, unless currency be requested, be made by transfer check on the Assistant Treasurer of the United States at New York, Boston, Philadelphia, New Orleans, or San Francisco, as the owner may request.

3. Returns for amounts of five dollars and upwards in fractional currency, and fifty dollars and upwards in legal-tender notes, received by express, will, unless otherwise requested, be made in new currency, by express, at the expense of the Department. If requested, checks on any of the above-mentioned Assistant Treasurers will be sent. Returns for five or more than five, but less than fifty dollars in legal-tender notes, will be made by check on any of the above-mentioned officers, or, if so requested, in new currency, by express, at the owner's expense.

4. When the remittance is from an Assistant Treasurer, designated depositary, or other officer of the Department, or from a national bank depositary, the proceeds will, if desired, be credited in account.

VI. GENERAL INSTRUCTIONS.

1. Every officer of this Department is required, whenever any spurious note purporting to have been issued by the United States, or by a national bank, shall be presented to him, to stamp thereon the word "counterfeit."

2. Notes of national banks which have failed or gone into voluntary liquidation will be received, redeemed, and forwarded to the Treasurer of the United States for retirement under these rules by the officers and banks hereinbefore mentioned, in the same manner and on the same terms as legal-tender notes, of issues prior to 1869.

Notes of all other national banks, whether mutilated or not, are redeemable only by the banks which issued them.

3. In case of the loss or destruction of his checks, the Treasurer will, upon notification thereof, stop payment on the original and

furnish the applicant for a duplicate with a form for bond of indemnity; upon the return of which, properly executed, a duplicate will be issued.

Observance of the foregoing regulations is enjoined on all officers of the Department, and will be expected of all making remittances to which they are applicable.

It is hoped that the liberal terms for the redemption of mutilated currency, which are established by these regulations, and the facilities which are provided for its remittance to the Department, will result in such an improvement of the condition of the circulation of the United States as will obviate all cause for complaint.

1565 To secure this end the Department asks the cordial cooperation not only of all its officers and depositaries, but also of all the national banks, in forwarding to the Treasurer of the United States for retirement all United States currency unfit for further circulation, as well as all legal-tender notes of issues prior to 1869, whatever their condition, which shall be received by them.

F. E. SPINNER,
Treasurer U. S.

Approved:
GEO. S. BOUTWELL,
Secretary of the Treasury.

[Circular Number 2.]

TREASURY OF THE UNITED STATES,
WASHINGTON, *March* 16, 1872.

Amended Regulations Governing the Distribution of "United States Notes, Series of 1869," and New Fractional Currency.

I. UNITED STATES NOTES, SERIES OF 1869.

The Department having now on hand a supply of United States notes, series of 1869, sufficient for the purpose, is desirous of issuing them in lieu of United States legal-tender notes of former issues remaining in circulation, all of which, whatever their condition, it is desired to retire. To secure this end, the following regulations are hereby adopted, in lieu of those upon the same subject contained in former circulars:

1. Holders of United States notes of former issues will be permitted to forward them by express to the Treasurer for redemption, at the expense of the Department, under the Government contract with Adams Express Company, from any point within the territory embraced by the terms of that contract, in sums of fifty dollars and upwards. Returns will, unless otherwise requested, be promptly made in all cases upon the completion of the counting of the notes to be retired, either in new notes of the series of 1869 or new fractional currency, forwarded by express at the expense of the Department; or, if so requested, in checks on Boston, New York, Philadelphia, or New Orleans. When returns are made in new notes of the series of 1869, they will be forwarded only to the parties from whom the old notes have been received.

2. Assistant Treasurers and designated depositaries of the United States, and national bank depositaries, will forward to the Treasurer, for exchange for new notes of the series of 1869, for credit in account or for checks on the above-mentioned Assistant Treasurers, as may be requested, all United States notes of former issues which may be received by them on Government account. The expense of transportation, both ways, by express, will be borne by the Department.

3. Assistant Treasurers and designated depositaries, in reporting,
in their statements of liabilities and assets, the United States
1566 notes, series of 1869, and national bank notes on hand, and
in making requisitions for new notes, will observe the following classification:

$500 and $1,000 notes will be classified as "large" notes; $50 and $100 notes as "medium;" $5, $10, and $20 notes as "small," and $1 and $2 notes as "ones and twos."

The aggregate of United States notes of former issues on hand will be reported separately in one item, as "United States notes of old issues."

4. Assistant Treasurers and designated depositaries, and national bank depositaries, will redeem, at their full face value, in notes of the series of 1869, all United States noes of each of which three-fifths or more of its original proportions are presented in one piece.

5. The new notes will also be sent by the Treasurer at the expense of the Department, when desired, in exchange for defaced and mutilated fractional currency forwarded in sums of five dollars and upwards, and for defaced and mutilated notes of the series of 1869, and circulating notes of national banks which have failed or gone into voluntary liquidation, forwarded in sums of fifty dollars and upwards.

6. Hereafter notes of the series of 1869 will not be forwarded by tke Treasurer in return for certificates of deposit issued by Assistant Treasurers and designated depositaries of the United States, or for bankers' drafts.

II. FRACTIONAL CURRENCY.

New fractional currency will be forwarded by express from the Treasurer's office, under the Government contract with Adams express Company, to any point within the territory covered by that contract, at the expense of the Department, on the following terms:

1. In return for defaced and mutilated fractional currency forwarded to the Treasurer for redemption in sums of five dollars and upwards, and for defaced and mutilated United States notes of the series of 1869, United States notes of former issues, whether mutilated or not, and notes of national banks which have failed or gone into liquidation, forwarded in sums of fifty dollars and upwards;

2. On the receipt of original certificates of deposit to the credit of the Treasurer of the United States, issued by assistant treasurers and designated depositaries of the United States, and national bank depositaries, for even thousands of dollars; and,

3. On the receipt and collection of drafts on banks and bankers

in Boston, New York, Philadelphia, and Washington, for even thousands of dollars.

In the last two cases, if the amount applied for is less than $1,000, the charges thereon at contract rates will be deducted; if less than an even multiple of $1,000, the charges on the fractional part of $1,000 included in the amount will be deducted.

1567 III. THE GOVERNMENT CONTRACT WITH ADAMS EXPRESS COMPANY.

1. The Government contract with Adams Express Company extends to and includes all "points accessible through established express lines, reached by continuous railway connection," within the United States, but does not extend westward beyond Omaha and Nebraska City, in Nebraska, and Atchison and Leavenworth, in Kansas, nor include the lines of Wells, Fargo & Co. in Missouri and Iowa. The contract covers the lines of the following express companies: Adams, American Merchants' Union, Central, Earl, Eastern, Harnden, Hope, Howard, National, New Jersey, Southern, Union, United States, and United States and Canada. Remittances can be made by express by private parties at the expense of the Department, only from points within the territory covered by the contract.

2. All packages forwarded under the contract should be plainly marked "Forwarded under Government contract with Adams Express Company."

3. All remittances of currency of the United States for redemption should be addressed to "Treasurer of the United States, Washington, D. C."

4. Legal-tender notes and fractional currency may be forwarded for redemption, inclosed together in the same package, at the expense of the Department under the contract, if at least five dollars in fractional currency is inclosed, or if the aggregate amount of the two equals or exceeds fifty dollars.

F. E. SPINNER,
Treasurer U. S.

[Circular Number 6.]

TREASURY OF THE UNITED STATES,
WASHINGTON, *July* 1, 1873.

Issue and Redemption of United States Currency.

The passage of a law requiring postmasters to register, free of charge, letters containing mutilated currency mailed to the Treasurer of the United States for redemption and new currency returned therefor by him; the discontinuance of the practice of returning transfer checks for remittances received by him by express; and the abolition of the franking privilege, to take effect July 1, 1873, have rendered it necessary to revise the regulations governing the issue and redemption of the currency of the United States. The following regulations are accordingly adopted in lieu of all which have been heretofore issued by the Treasury Department on the subject. Particular attention is invited to portions printed in *italics:*

I. NEW CURRENCY.

New legal-tender and fractional notes are forwarded to assistant treasurers and designated depositaries of the United States, upon their making requisition therefor upon the Treasurer by letter for such denominations as they desire, provided it appears that 1568 they are in need of funds. The mere overdraft of the Treasurer's account is not, however, considered as sufficient occasion for making requisitions for new currency, when the officer has on hand sufficient funds to meet current disbursements.

NEW LEGAL-TENDER NOTES.

1. New legal-tender notes are furnished by the Treasurer to parties other than assistant treasurers and designated depositaries only in return for legal-tender and fractional notes which are defaced, mutilated, or otherwise unfit for circulation, and for legal-tender notes of issues prior to 1869, forwarded to him in compliance with these regulations. Exchanges of new notes for other new notes of different denominations are not made, except in special cases where the public convenience seems to require it. In such cases, permission to make the exchange must be obtained from the Department prior to forwarding the notes, and the express charges both ways, at private rates, must be borne by the owners of the notes.

2. New legal-tender notes are not furnished in any case in return for certificates of deposit issued by assistant treasurers or designated depositaries of the United States or national bank depositaries, or for bankers' drafts.

NEW FRACTIONAL CURRENCY.

In addition to being forwarded, when desired, in return for old, defaced, and mutilated legal-tender and fractional notes, and for legal-tender notes of issues prior to 1869, whether mutilated or not, on the terms mentioned below, new fractional currency is forwarded by express from the Treasurer's office, under the Government contract with Adams Express Company, in sums of even thousands of dollars—

1. On the receipt of original certificates of deposits to the Treasurer's credit, issued by assistant treasurers and designated depositaries of the United States and national bank depositaries; and—

2. In return for drafts on banks and bankers in Boston, New York, Philadelphia, and Washington, after collection thereof.

If the amount applied for is less than one thousand dollars, the express charges, at contract rates, are deducted from the remittance; if less than an even multiple of one thousand dollars, the charges on the fractional part of one thousand dollars, included in the amount, are deducted.

II. DEFACED AND MUTILATED CURRENCY.

1. Defaced and mutilated legal-tender and fractional notes, each equaling or exceeding by face measurement, three-fifths of its original proportions in one piece, if clearly genuine, are redeemable at the full face value of whole notes in new currency, by the Treasurer,
the several assistant treasurers and depositaries of the United
1569 States, and all national bank depositaries, and are receivable
at their full face value by all officers of the Treasury Department in payment of currency dues to the United States.

2. The officers and bank depositaries by whom such currency is received will not use it in their disbursements, but will forward it to the Treasurer of the United States, at Washington, at the expense of the Department, under the Government contract with the Adams Express Company.

3. Whenever the amount presented for redemption at one time to an assistant treasurer, depositary, or national bank depositary equals or exceeds fifty dollars in legal-tender notes, or five dollars in fractional currency, it is optional with the officer or bank to either pay the owner its value in new currency or give a receipt conditioned for such payment when return for the amount has been received from the Treasurer.

When the same person habitually presents currency for redemption in sums somewhat less than those mentioned, it is discretionary with the officer or bank to refuse to receive it until it has been made up to the required amount.

4. The Department will receive, at its own expense, under the contract with Adams Express Company, from any person, company, firm, bank, or corporation, situated within the territory covered by the contract, legal-tender and fractional notes which are defaced or mutilated, or in any way unfit for circulation, provided that the fractional currency be sent in sums of five dollars and upwards, and the legal-tender notes in sums of fifty dollars and upwards. Parties remitting currency for redemption, and especially officers of the Department, are, however, requested to make ther remittances as large as practicable, and, when it is possible to remit in sums of one thousand dollars, or an even multiple thereof.

Legal-tender notes and fractional currency may be forwarded in the same package by express, at the expense of the Department, if at least five dollars in fractional currency is inclosed, or if the amount of the whole remittance equals or exceeds fifty dollars.

5. *Banks and other parties situated without the limits of the territory covered by the contract are permitted to forward currency for redemption to the Treasurer by express, at the expense of the Department, only in sums of one thousand dollars, or an even multiple thereof. The remittances should be marked "Under Government contract with Adams Express Company, from" the point of connection with that company, and the charges should be prepaid to that point, the bill therefor being sent to the Treasurer for settlement, through the proper accounting officers, in favor of the consignor. New currency will be returned in all cases at the expense of the Department.*

6. The Department is desirous of withdrawing from circulation all

legal-tender notes issued prior to the issue of 1869, whether they are mutilated or defaced or not, and will redeem them on the same terms and in the same manner as notes unfit for circulation.

7. Fractional currency, before being presented for redemption, should be assorted to different issues; each issue should be 1570 assorted by denominations and enclosed in paper straps, at least one inch wide, securely fastened; each strap, if the amount of the parcel will admit, should contain one hundred notes of the same denomination; and on each strap should be written, with ink, the denomination and the amount inclosed, and the name of the owner. The entire amount should be securely done up in one package, and upon the wrapper the date, the amount inclosed, and the name of the owner should be written with ink.

III. Fragmentary Notes.

1. Fragments of legal tender and fractional notes, constituting less than three-fifths of the original proportions of the notes, and notes torn or cut into pieces each less than three-fifths, are redeemable only by the Treasurer of the United States.

2. Fragments less than half are reedemed only when accompanied by an affidavit from the owner and from such other persons as have knowledge of the facts, that the missing portions have been totally destroyed. The affidavits must state the cause and the manner of the mutilation, and the character of the affiants must be certified to be good by a magistrate or other public officer. When accompanied by satisfactory proof, such fragments are redeemed at the full face value of the notes of which they are part. The Treasurer exercises such a discretion under this regulation as may seem to him needful to protect the United States from fraud.

3. Fragments each less than half, but together purporting to constituting more than one-half of a note, are redeemed only when it appears, either from the notes themselves or from an affidavit made in conformity to the foregoing paragraph, that they are actually parts of one original note.

4. Fragments constituting half or more than half, but less than three-fifths of notes, when unaccompanied by evidence that the missing portions have been destroyed, are redeemable for half of the face value of the notes.

5. In redeeming, under the last preceding regulation, interest notes, with which interest is payable, half of the interest due on the notes is paid.

6. Demand notes are redeemable in gold coin by the Treasurer, on presentation at his office, on the same terms as to mutilations as legal-tender notes.

7. Unredeemed fragments less than half are retained by the Treasurer; counterfeit notes are branded and returned.

IV. Mode of Transmission to Treasurer.

When a person making a remittance, either by mail or by express, fails to give his full name and post office address, including the

State, the remittance is retained until the name and address are furnished together with a satisfactory description of the package claimed.

An inventory, describing the contents by parcels, denomination, and amounts, should accompany every package.

1571 REMITTANCES BY EXPRESS.

1. All remittances of money by express for redemption must be addressed to the "*Treasurer of the United States, Washington, D. C.*"

2. The packages must be put up in boxes or in wrappers of stout paper or cloth, tied with strong twine, secured by careful sealing, and plainly marked on the outside with the amount and nature of the contents, the full name and post office address of the consignor, and the fact that they are forwarded under the Government contract with Adams Express Company, thus:

$——. Mutilated currency for redemption, under contract
with Adams Express Company,
TREASURER OF THE UNITED STATES,
From JOHN SMITH, *Smithville, O.* *Washington, D. C.*

3. A letter of advice, written on not less than half a sheet of commercial note paper, must be put inside the package, and a duplicate letter should be sent by mail to the Treasurer on the day that the remittance is forwarded.

REMITTANCES BY MAIL.

1. All remittances of money by mail for redemption must be addressed to "*Treasurer of the United States, Washington, D. C.*"

2. *Under the act of January* 31, 1873, *abolishing the franking privilege, all letters containing such remittances must be prepaid with the full legal rate of postage, the same as ordinary letters. Letters not prepaid are not mailed to their destination, but are sent to the Dead Letter Office. The postage on all letters whatever must be prepaid.*

3. *It is, however, the duty of postmasters to register free of charge all letters containing currency of the United States addressed to the Treasurer for redemption, on which the postage has been fully prepaid, and all letters containing new currency returned by him therefor. It is recommended that all such letters be registered, as the registration is a protection against loss.*

4. Money for redemption, after being prepared as hereinbefore directed, should be sealed or tied up in paper of suitable strength, and plainly marked on the outside with the owner's name and full address, and with the amount inclosed. The package should then be sealed up in an envelope, together with the letter of advice, written on not less than half a sheet of commercial note paper, stating the name and full post office address of the owner, the value of the remittance, and the manner in which return shall be made.

5. Remittances to the Treasurer by mail are invariably at the risk of the owners. All communications to the Treasurer in regard

to packages ascertained to have been lost in transmission by mail are referred for investigation to the Second Assistant Postmaster General, to whom any subsequent inquiry on the subject should be addressed.

1572 V. RETURNS—HOW MADE.

1. Returns for amounts less than five dollars RECEIVED BY MAIL are made in new currency by registered mail, free of charge to the owner.

2. Returns for amounts of five dollars and upwards RECEIVED BY MAIL are, unless otherwise requested, made by transfer checks on the Assistant Treasurer of the United States in New York, Boston, Philadelphia, New Orleans, or San Francisco, as the owners may request. If new currency is desired it is sent by express, if practicable, on the terms mentioned in the next paragraph; otherwise, by registered mail, free of charge to the owner.

3. *Returns for amounts of five dollars and upwards in fractional currency and fifty dollars and upwards in legal-tender notes* RECEIVED BY EXPRESS *are invariably made by express at the expense of the Department to the parties for whom the old currency is received in new legal-tender notes or fractional currency in such denominations as the owners may request. When the kind of currency desired is not specified returns are made in new currency of the same kind as that received. The practice of returning transfer checks for such remittances has been discontinued in all cases.*

4 *Returns for less than fifty dollars in legal-tender notes, and for less than five dollars in fractional currency,* RECEIVED BY EXPRESS, *are made in new currency by express at the expense of the owner, the charges at contract rates being deducted from the remittance.*

5. The proceeds of remittances from assistant treasurers, designated depositaries, and other officers of the Government, and national bank depositaries, are, when they so request, credited in account.

VI. GENERAL INSTRUCTIONS.

1. Every officer of the Treasury Department is required, whenever any spurious note purporting to have been issued by the United States is presented to him to write or stamp on it the word "Counterfeit."

2. Notes of national banks that have FAILED OR GONE INTO VOLUNTARY LIQUIDATION are received, redeemed, and forwarded to the Treasurer by the officers and banks before mentioned for retirement under these rules, in the same manner and on the same terms as United States notes of issues prior to 1869. Lists of such banks are furnished by the Treasurer. Notes of all other national banks, whether mutilated or not, are REDEEMABLE ONLY BY THE BANKS WHICH ISSUED THEM, and by their redeeming agents. National bank notes which are so defaced or mutilated that the name of the bank cannot be distinguished should be forwarded to the Comptroller of the Currency for identification.

3. In case of the loss or destruction of one of his checks, and of an application for a duplicate, the Treasurer stops payment of the

original check, and furnishes the applicant for a duplicate with a form of bond of indemnity, upon return of which properly executed a duplicate is issued.

4. Assistant treasurers and designated depositaries of the
1573 United States, in reporting their statements of liabilities and
assets, the legal-tender notes of the series of 1869, and the old defaced legal-tender notes, and the national bank notes on hand, and in making requisitions for new notes, should observe the following classification:

$500 and $1,000 notes should be classed as "large" notes; $50 and $100 notes as "medium;" $5, $10, and $20 notes as "small," and $1 and $2 notes as "1's and 2's."

VII. GOVERNMENT CONTRACT WITH ADAMS EXPRESS COMPANY.

The Government contract with Adams Express Company etxends to and includes all points within the United States "accessible through established express lines, reached by continuous railway connection," but does not extend westward beyond Omaha and Nebraska City, in Nebraska, and Atchison and Leavenworth, in Kansas, nor include the line of Wells, Fargo & Co., in Missouri and Iowa. The contract covers the lines of the following express companies: Adams, American Merchants' Union, Central, Earl, Eastern, Harnden, Hope, Howard, National, New Jersey, Southern, Union, United States, and United States and Canada.

Observance of the foregoing regulations is enjoined on all officers of the Department, and will be expected of all making remittances to which they are applicable.

F. E. SPINNER,
Treasurer U. S.

Approved:
WM. A. RICHARDSON,
Secretary of the Treasury.

[Circular No. 11.]

TREASURY OF THE UNITED STATES,
WASHINGTON, *July* 1, 1874.

Regulations Governing the Redemption of National Bank Notes.

The following regulations are prescribed for the redemption of national bank notes, under the third section of "An act fixing the amount of United States notes, providing for a redistribution of the national bank currency, and for other purposes," approved June 20, 1874:

1. The second and third sections of the said act are as follows:

"SEC. 2. That section 31 of 'the national bank act' be so amended that the several associations therein provided for shall not hereafter be required to keep on hand any amount of money whatever by reason of the amount of their respective circulations; but the moneys required by said section to be kept at all times on hand shall be determined by the amount of deposits in all respects, as provided for in the said section.

"SEC. 3. That every association organized, or to be organized, under the provisions of the said act, and of the several acts amendatory thereof, shall at all times keep and have on deposit in
1574 the Treasury of the United States, in lawful money of the
United States, a sum equal to five per centum of its circulation, to be held and used for the redemption of such circulation; which sum shall be counted as a part of its lawful reserve, as provided in section 2 of this act; and when the circulating notes of any such associations, assorted or unassorted, shall be presented for redemption in sums of $1,000 or any multiple thereof to the Treasurer of the United States, the same shall be redeemed in United States notes. All notes so redeemed shall be charged by the Treasurer of the United States to the respective associations issuing the same, and he shall notify them severally on the first day of each month, or oftener, at his discretion, of the amount of such redemptions; and whenever such redemptions for any association shall amount to the sum of $500, such association so notified shall forthwith deposit with the Treasurer of the United States a sum in United States notes equal to the amount of its circulating notes so redeemed. And all notes of national banks worn, defaced, mutilated, or otherwise unfit for circulation, shall, when received by any assistant treasurer or at any designated depositary of the United States, be forwarded to the Treasurer of the United States for redemption as provided herein. And when such redemptions have been so reimbursed the circulating notes so redeemed shall be forwarded to the respective associations by which they were issued; but if any of such notes are worn, mutilated, defaced, or rendered otherwise unfit for use they shall be forwarded to the Comptroller of the Currency and destroyed, and replaced as now provided by law: *Provided*, That each of said associations shall reimburse to the Treasury the charges for transportation and the costs for assorting such notes; and the associations hereafter organized shall also severally reimburse to the Treasury the cost of engraving such plates as shall be ordered by each association respectively; and the amount assessed upon each association shall be in proportion to the circulation redeemed, and be charged to the fund on deposit with the Treasurer: *And provided further*, That so much of section 32 of said national bank act requiring or permitting the redemption of its circulating notes elsewhere than at its own counter, except as provided for in this section, is hereby repealed."

2. The notes of national banks, other than gold banks, may be forwarded to the Treasurer of the United States for redemption, under the Government contract with Adams Express Company, in sums of $1,000 or any multiple thereof, by any person, company, firm, bank, or corporation situated within the territory covered by the contract. Remittances may be made up of the notes of various banks.

Remittances from banks and other parties situated without the territory covered by the contract should be marked "Under Government contract with Adams Express Company from ——" (the point of connection with the company); the charges should be prepaid to that point, and the bills therefor should be sent to the Treasurer for reimbursement to the consignors.

Remittances of any other amounts than even multiples of
1575 $1,000 will not be received under the Government contract,
but the charges thereon must be paid by the consignors.

3. Assistant treasurers and designated depositaries of the United States will select from the funds in their custody and from those which shall hereafter be received by them all notes of national banks other than gold banks, which are worn, defaced, mutilated, or otherwise unfit for circulation, and will forward them to the Treasurer from time to time under the Government contract with Adams Express Company. When practicable, the remittances should be made in sums of $1,000 or an even multiple thereof.

4. Notes equaling or exceeding three-fifths of their original proportions, if in such condition that their genuineness can be clearly ascertained, and if the name of the bank and the signature of one of its officers are distinguishable, will be redeemed for their full face value. Fragments less than three-fifths will not be redeemed by the Treasurer, but should be presented for redemption to the banks by which the notes were issued. Should such fragments as thost last mentioned be received by the Treasurer they will be returned to the parties by whom they were forwarded.

5. The notes should be inclosed in strong straps, of sufficient width, and securely fastened. On each strap should be written with ink the amount inclosed, and the name of the owner.

6. An inventory, describing the contents by parcels and amounts, must accompany every remittance.

7. All remittances must be addressed to the "Treasurer of the United States, Redeeming Agent, Washington, D. C."

8. The packages must be put up in boxes or in wrappers of stout paper or cloth, tied with strong twine, secured by careful sealing, and plainly marked on the outside with the amount and nature of the contents, the full name and post office address of the consignor, and the fact that they are forwarded under the Government contract with Adams Express Company, thus:

$——. National bank notes for redemption, under contract
with Adams Express Company.
TREASURER OF THE UNITED STATES, *Redeeming Agent,*
From JOHN SMITH, *Smithville, O.* *Washington, D. C.*

9. A letter of advice, written on not less than half a sheet of commercial note paper, must be put inside the package, and a duplicate letter should be sent by mail to the Treasurer on the day that the remittance is forwarded.

10. The Government contract with Adams Express Company extends to and includes all points within the United States "accessible through established express lines, reached by continuous railway connection," but does not extend westward beyond Omaha

and Nebraska City, in Nebraska, and Atchison and Leavenworth, in Kansas, nor include the lines of Wells, Fargo & Co., in Missouri and Iowa. The contract covers the lines of the following express
companies: Adams, American Merchants' Union, Central,
1576 Earl, Eastern, Harnden, Hope, Howard, National, New Jersey, Southern, Union, United States, and United States and Canada.

11. Returns for remittances from private parties will, in all cases, be made by express to the parties from whom the bank notes have been received, in new legal-tender notes or fractional currency, of such denominations as may be asked for. The proceeds of remittances from assistant treasurers and designated depositaries will be placed to their credit in general account, unless a request shall accompany the remittance that return be made in new legal tender notes or fractional currency.

F. E. SPINNER,
Treasurer U. S. and Redeeming Agent.

[Circular No. 13.]

TREASURY OF THE UNITED STATES,
WASHINGTON, *April* 8, 1875.

The following Regulations, amendatory of Circular No. 6, dated July 1, 1873, concerning the redemption of mutilated currency, are adopted, to take effect May 1, 1875.

Particular attention is invited to section I, which supersedes those sections of Circular No. 6 in regard to the redemption of mutilated currency:

I. REDEMPTION OF LEGAL-TENDER NOTES AND FRACTIONAL CURRENCY.

1. *Condition of Notes Redeemable by the Treasurer, the several Assistant Treasurers, and Depositaries of the United States.*

Legal-tender notes, the mutilation of each not equaling one-tenth, and fractional notes, the mutilation of each not equaling one-fifth, are redeemable at the full face value of whole notes by the Treasurer, the several assistant treasurers, and depositaries of the United States, and all national bank depositaries.

2. *Condition of Mutilated Notes Redeemable by the Treasurer of the United States only.*

LEGAL-TENDER NOTES.

1. Legal-tender notes, the mutilation of each equaling or exceeding, by face measurement, one-tenth, but not reaching two-tenths of its original proportions, are redeemable at nine-tenths of the full face value of such whole notes.

Notes, the mutilation of which equals or exceeds two-tenths, but does not reach three-tenths, are redeemable at eight-tenths of their full face value.

Notes, the mutilation of which equals or exceeds three-tenths, but does not reach four-tenths, are redeemable at seven-tenths of their full face value.

Notes, the mutilation of which equals or exceeds four-tenths, but does not reach one-half, are redeemable at six-tenths of their full face value.

1577 Fragments of notes, each constituting clearly one-half, are redeemable at one-half the full face value of such whole notes.

2. Fragments less than half are redeemed only when accompanied by an affidavit executed in accordance with the requirements of paragraph 4 of this section.

3. Fragments, each less than half, but together purporting to constitute more than one-half of a note, are redeemed only when it appears either from the notes themselves or from an affidavit made in conformity to the following paragraph, that they are actually parts of one original note.

4. Notes, mutilated as described in the preceding paragraphs, accompanied by an affidavit from the owner and from such other persons as have knowledge of the facts, that the missing portions have been totally destroyed, are, if the proof furnished is satisfactory, redeemed at the full face value of such whole notes.

The affidavit must state the cause and the manner of the mutilation, and the character of the affiants must be certified to be good by a magistrate or other public officer.

The Treasurer will exercise such a discretion under this regulation as may seem to him needful to protect the United States from fraud.

5. Unredeemed fragments less than half are retained by the Treasurer; counterfeit notes are branded and returned.

FRACTIONAL CURRENCY.

Fractional notes, the mutilation of each equaling or exceeding, by face measurement, one-fifth, but not reaching two-fifths of its original proportions, are redeemable at four-fifths of the full face value of such whole notes.

Fractional notes, the mutilation of which equals or exceeds two-fifths, but does not reach one-half, are redeemable at three-fifths of their full face value.

Paragraphs 2, 3, 4, and 5 of the preceding section apply also to fractional currency.

II. MODE OF TRANSMISSION TO TREASURER.

When a person making a remittance, either by mail or by express, fails to give his full name and post office address, including the State, the remittance is retained until the name and address are furnished, together with a satisfactory description of the package claimed.

An inventory, describing the contents by parcels and amounts, should accompany every remittance.

REMITTANCES BY EXPRESS.

1. All remittances of legal-tender notes and fractional currency by express for redemption must be addressed to the "Treasurer of the United States, Washington, D. C."

2. The packages must be put up in boxes or in wrappers of stout paper or cloth, tied with strong twine, secured by careful
sealing, and plainly marked on the outside with the amount
1578 and nature of the contents, the full name and post office address of the consignor, and the fact that they are forwarded under the Government contract with Adams Express Company, thus:

$——. Mutilated ———— for redemption, under contract with Adams Express Company.

TREASURER OF THE UNITED STATES,
Washington, D. C.

From JOHN SMITH, *Smithville, Ohio.*

3. The words "legal-tender notes," or "fractional currency," or "legal and fractional," should be inserted, according to the character of the contents of the package, after the word "mulilated," as indicated in the above diagram.

4. A letter of advice, written on not less than half a sheet of commercial note paper, must be put inside the package, and a duplicate letter should be sent by mail to the Treasurer on the day that the remittance is forwarded.

III. GENERAL INSTRUCTIONS.

1. Every officer of the Treasury Department is required, whenever any spurious note purporting to have been issued by the United States is presented to him, to write or stamp on it the word "Counterfeit."

2. Notes of national banks that have failed or gone into voluntary liquidation are received, redeemed, and forwarded to the Treasurer by the officers and banks before mentioned for retirement under these rules, in the same manner and on the same terms as United States notes of issues prior to 1869.

Notes of national banks which have deposited legal tender notes for the purpose of withdrawing a portion of their circulation are, if equaling or exceeding three-fifths of their original proportions, redeemed by the Treasurer United States; if constituting less than three-fifths of a whole note, they should be sent to the issuing bank for redemption. Lists of banks described in this and the preceding paragraph are furnished by the Treasurer.

Notes of all other national banks, whether mutilated or not, are, if equaling or exceeding three-fifths of their original proportions, redeemable by and should be forwarded to the "Treasurer United States and Redemption Agent, Washington, D. C."

National bank notes which are so defaced or mutilated that the name of the bank can not be distinguished, should be forwarded to the Comptroller of the Currency for identification.

3. Assistant treasurers and designated depositaries of the United

States, in reporting in their statements of liabilities and assets, the legal-tender notes, and the national bank notes on hand, and in making requisitions for new notes, should group and separate the same, as indicated below:

$1,000 and $500 (in one item). $20 notes (separate).
100 " 50 " 10 " "
1 " 2 " 5 " "

1579 IV. GOVERNMENT CONTRACT WITH ADAMS EXPRESS COMPANY.

The Government contract with Adams Express Company extends to and includes all points within the United States "accessible through established express lines, reached by continuous railway connection," but does not extend westward beyond Omaha and Nebraska City, in Nebraska, and Atchison and Leavenworth, in Kansas, nor include the lines of Wells, Fargo & Co., in Missouri and Iowa. The contract covers the lines of the following express companies: Adams, American Merchants' Union, Central, Earl, Eastern, Harnden, Hope, Howard, National, New Jersey, Southern, Texas, Union, United States, and United States and Canada.

Compliance with the foregoing regulations is enjoined on all officers of the Department and their observance will be expected of all making remittance to this office.

F. E. SPINNER,
Treasurer U. S.

Approved:
B. H. BRISTOW,
Secretary of the Treasury.

[Circular No. 157.]

TREASURY DEPARTMENT, OFFICE OF INTERNAL REVENUE,
WASHINGTON, D. C., *October* 4, 1876.

Concerning the Transmission of Internal Revenue Documentary and Proprietary Stamps to Purchasers Thereof.

The act of Congress entitled "An act making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June, 30, 1877, and for other purposes," approved August 15, 1876, provides that "hereafter the transmission of internal revenue stamps to the officers of the internal revenue service shall be made through the mails of the United States in registered packages.

A contract having been entered into with Adams Express Company by the Secretary of the Treasury, May 12, 1866, for the transportation from one point to another in the United States, of all moneys and securities, including internal revenue stamps, belonging to the United States, this office has, since that date, delivered to that company, under such contract, all documentary and proprietary stamps purchased by manufacturers of proprietary articles and dealers in stamps; and contract rates only—which are much lower than the ordinary commercial rates—were collected from consignees.

The Adams Express Company does not appear to have made any objection to the receipt of such stamps for transportation under the contract, although it is believed that it was not obligated so to do by that contract, inasmuch as the United States was not the absolute owner of the stamps delivered for transportation.

1580 Since the passage of the act of August 15, 1876, above quoted, this office has been compelled thereby to forward all stamps to officers of the internal revenue service by mail, in registered packages, and as these shipments constituted the greater part of the service performed for this office by the Adams Express Company, that company now declines to receives for transmission to purchasers, under the contract, packages of documentary and proprietary stamps claiming that for this transportation it has never received the actual cost of the service.

Inasmuch, therefore, as there seems to be no authority in the contract by which this company can be required to continue the service at the rates heretofore charged, purchasers of stamps are advised to make their own arrangements for the transportation of stamps from New York to their places of business.

Stamps will be transmitted by registered mail, if so desired by purchasers, provided the amount required to pay the postage and registry fee is advanced for that purpose, or stamps will be transmitted in such other manner as the purchaser may direct, it being distinctly understood that this office will under no circumstances be responsible for stamps after they leave the hands of the stamp agent, under whose direction they are packed for shipment, nor will this office be responsible for any shortage which may be found on opening a package, unless it can be conclusively shown by the evidence of disinterested persons that every seal upon the package was unbroken when it was received. As a proper measure of precaution, it is suggested that all the seals be carefully cut from a package when it is opened, and if the package is found short the seals intact may then be transmitted to this office with the evidence of shortage.

Purchasers who desire to receive their stamps by registered mail may remit to this office from time to time an amount sufficient to prepay the postage and registry fee on any number of packages of stamps to be subsequently ordered.

The postage on such packages will be one cent for each ounce or fractional part thereof, with an addition of ten cents for registry fee upon each package.

Where no specific instructions as to the mode of transmission are received stamps will be forwarded by express as heretofore.

H. C. ROGERS,
Acting Commissioner.

[Circular No. 20.]

TREASURY OF THE UNITED STATES,
WASHINGTON, *February* 1, 1877.

Regulations Governing the Redemption of National Bank Notes.

The following regulations are adopted in lieu of all which have been heretofore isssued governing the redemption of national bank

notes by the national bank redemption agency, under the provisions of "An act fixing the amount of United States notes, pro-
1581 viding for a redistribution of the national bank currency, and other purposes," approved June 20, 1874 (18 Stat., 123):

I. The Redemption Act.

The provisions of the said act relating to the redemption of the national bank currency are as follows:

"Sec. 2. That section thirty-one of 'the national bank act' be so amended that the several associations therein provided for shall not hereafter be required to keep on hand any amount of money whatever by reason of the amount of their respective circulations; but the moneys required by said section to be kept at all times on hand shall be determined by the amount of deposits in all respects, as provided for in the said section.

"Sec. 3. That every association organized, or to be organized, under the provisions of the said act, and of the several acts amendatory thereof, shall at all times keep and have on deposit in the Treasury of the United States, in lawful money of the United States, a sum equal to five per centum of its circulation, to be held and used for the redemption of such circulation; which sum shall be counted as a part of its lawful reserve, as provided in section two of this act; and when the circulating notes of any such associations, assorted or unassorted, shall be presented for redemption, in sums of one thousand dollars or any multiple thereof, to the Treasurer of the United States, the same shall be redeemed in United States notes. All notes so redeemed shall be charged by the Treasurer of the United States to the respective associations issuing the same, and he shall notify them severally, on the first day of each month, or oftener, at his discretion, of the amount of such redemptions; and whenever such redemptions for any association shall amount to the sum of five hundred dollars, such association so notified shall forthwith deposit with the Treasurer of the United States a sum in United States notes equal to the amount of its circulating notes so redeemed. And all notes of national banks, worn, defaced, mutilated, or otherwise unfit for circulation, shall, when received by any assistant treasurer or at any designated depositary of the United States, be forwarded to the Treasurer of the United States for redemption as provided herein. And when such redemptions have been so reimbursed, the circulating notes so redeemed shall be forwarded to the respective associations by which they were issued; but if any such notes are worn, mutilated, defaced, or rendered otherwise unfit for use, they shall be forwarded to the Comptroller of the Currency and destroyed, and replaced as now provided by law: *Provided*, That each of said associations shall reimburse to the Treasury the charges for transportation, and the costs for assorting such notes; and the associations hereafter organized shall also severally reimburse to the Treasury the cost of engraving such plates as shall be ordered by each association respectively; and the amount assessed upon each association shall be in proportion to the circulation redeemed, and be charged to the fund on deposit with the Treasurer: *And provided further*, That so much of section thirty-two of said national bank act requiring or permitting the redemption of its circulating notes elsewhere than at its own counter, except as provided for in this section, is hereby repealed." 1582

II. ORIGINAL FIVE PER CENT. DEPOSIT.

1. Every newly organized national bank, with the exception of national gold banks, is required, immediately on the receipt of its circulation from the Comptroller of the Currency, to deposit in the Treasury of the United States a sum equal to five per centum thereof in lawful money of the United States, in one of the following ways:

I. By a deposit of United States notes with the assistant treasurer U. S. in New York, Boston, Philadelphia, or New Orleans, to the credit of the currency transfer account of the Treasurer, U. S. or with the assistant treasurer U. S. in Baltimore, Chicago, Cincinnati, or St. Louis, to the credit of the general account of the Treasurer U. S. Banks not situated in one of the above-named cities should make the deposit through their correspondents. The original certificate of deposit must be forwarded to the Treasurer U. S. and Redemption Agent.

II. By a remittance of United States notes, addressed to the Treasurer U. S., marked "United States notes for credit of five per cent. fund," with the express charges thereon prepaid.

2. In estimating the circulation upon which the deposit is required, the bank must include all notes of its issue in its own possession as well as those in actual circulation.

3. A similar deposit, made in the same manner, is required on all additional circulation issued to national banks.

III. REDEMPTION OF NATIONAL BANK NOTES.

1. The notes of national banks, other than gold banks, may be forwarded to the Treasurer U. S. and Redemption Agent for redemption, under the contract with the Adams Express Company, in sums of $1,000, or any multiple thereof, by any person, company, firm, bank, or corporation situated within the territory covered by the contract.

Remittances from banks and other parties situated without the territory covered by the contract should be marked "under contract with Adams Express Company, from ——" (the point of connection with that company); the charges should be prepaid to that point, and the bills therefor should be sent to the Treasurer U. S. and Redemption Agent for approval and reimbursement to the consignors by Treasury drafts.

Remittances of any other amounts than $1,000 or a multiple thereof are not received for redemption under the contract, but the charges thereon must be prepaid by the consignors.

2. Assistant treasurers and designated depositaries of the United States are required to select from the funds received by them all notes of national banks which are worn, defaced, mutilated, or otherwise

unfit for circulation, and to forward them to the Treasurer U.
1583 S. and Redemption Agent, from time to time, under the contract with Adams Express Company, in sums of $1,000, or a multiple thereof, for their credit in general account.

3. Notes equaling or exceeding three-fifths of their original proportions, if in such condition that their genuineness can be clearly ascertained, and if the name of the bank and the signature of one of its officers are distinguishable, are redeemed for their full face value. Notes the signatures of which have evidently become illegible from wear are not rejected on that account.

4. Fragments less than three-fifths are not redeemed by the redemption agency, but should be presented for redemption to the banks by which the notes were issued. If redeemed by the banks of issue, they are accepted by the agency at the valuation placed on them by the banks. This rule applies to fragments, which the Comptroller of the Currency has certified that he will accept for an amount less than their face value, if redeemed by the bank of issue. The regulations subjecting United States currency to discount do not apply to national bank notes.

5. The notes must be inclosed in strong straps, of sufficient width, and securely fastened. On each strap must be printed or written with ink the amount inclosed and the name of the owner. Not less than 100 nor more than 200 notes should be placed in a strap.

6. An inventory, describing the contents by parcels and amounts, must be inclosed with every remittance.

7. All remittances of national bank notes must be addressed to the "Treasurer of the United States and Redemption Agent, Washington, D. C."

8. The packages must be put up in boxes or in wrappers of stout paper, tied with strong twine secured by careful sealing, and plainly marked on the face of the outer wrapper with the amount and nature of the contents, the full name and address of the consignor, and the fact that they are forwarded under the contract with Adams Express Company, thus:

$——. National Bank Notes for redemption [or for credit of five per cent. fund] under contract with Adams Express Company.

From	TREASURER OF THE UNITED STATES
FIRST NATIONAL BANK,	AND REDEMPTION AGENT,
Smithville, Ohio.	*Washington, D. C.*

9. A letter of advice, written on not less than half a sheet of commercial note paper, fully describing the remittance and stating the disposition to be made of the proceeds, must be put inside the package, and a duplicate letter sent by mail to the Treasurer U. S. and Redemption Agent on the day that the remittance is forwarded.

10. The packages, when received at the agency, are charged to and receipted by the counters, with the seals unbroken, and each counter is required to count, return, and obtain a receipt for the

contents of each package before receiving another. An inventory or schedule of the contents, according to the amounts 1584 marked on the straps, is made immediately on opening the package, and the contents of each strap are proved separately and put aside, if found to be correct. If discrepancies are found, they are noted on the proper strap, which is returned to the owner. "Shorts" are at once reported and verified by the teller in charge. The packages are charged to the counters by the amounts on the wrappers, and any discrepancy between this amount and the contents is reported as an "over" or a "short" by inventory.

11. Returns for remittances of national bank notes from Boston, New York, and Philadelphia are made by transfer checks on the assistant treasurers in the cities from which the remittances are received.

12. Returns for remittances from all other places are made by express, in new legal-tender notes of such denominations as may be asked for, to the parties by whom the remittances are made, with the express charges thereon prepaid to their destination. The arrangements with the express companies forbid the furnishing of exchange for bank notes redeemed or the remittance of the proceeds to any other parties than the consignors.

13. Notes of a bank's own issue redeemed by it should be forwarded directly to the Comptroller of the Currency, with the express charges thereon prepaid. This rule does not apply to notes of a bank's own issue, received by it in the ordinary course of business, mixed with other bank notes.

14. The law officers of the Department having decided that national bank notes, stolen when unsigned, and put in circulation with forged signatures, are not obligatory promissory notes of the bank under section 5182 of the Revised Statutes, such notes are not redeemed by the agency.

15. United States currency and national bank notes, whether for redemption or credit, must be forwarded in separate packages, addressed, respectively, to the Treasurer U. S. and to the Treasurer U. S. and Redemption Agent, and must be accompanied by separate letters of advice.

16. Assistant treasurers and depositaries of the United States and national bank depositaries are not required to redeem national bank notes, but they should receive, in payment of public dues, and on account of funds, all national bank notes redeemable at their full face value by the agency under the foregoing regulations.

17. National bank depositaries may forward national bank notes to the agency for their credit in general account as transfers of funds.

IV. Reimbursement for Notes Redeemed.

1. Immediately on receipt of the Treasurer's notifications, advising them of the redemptiion of their notes national banks are

required to remit the whole amount due in one of the following ways:

I. By a deposit of United States notes with the assistant treasurer
U. S. in New York, Boston, Philadelphia, or New Orleans, to the
1585 credit of the currency transfer account of the Treasurer U.
S., or with the assistant treasurer U. S. in Baltimore, Chicago, Cincinnati, or St. Louis, to the credit of the general account of the Treasurer U. S. Banks not situated in one of the above-named cities should make the deposit through their correspondents. The original certificate of deposit must be forwarded directly to the Treasurer U. S. and Redemption Agent by the bank making the deposit, as credit cannot be given on the books of the agency until it is received.

II. By a remittance of national bank notes, addressed to the Treasurer U. S. and Redemption Agent, under the contract with Adams Express Company, marked "National bank notes for credit of five per cent. fund."

2. Reimbursement may also be made by a remittance of legal-tender notes of fractional currency, addressed to the Treasurer U. S. and marked "U. S. currency for credit of five per cent. fund;" but the express charges, if not prepaid, are deducted from the proceeds of the remittance.

3. The law requires national banks to remit for the full amount of their notes redeemed immediately on the receipt of the calls, and does not permit them to await the receipt of the notes fit for circulation or of the certificate of the destruction of the notes unfit for circulation.

4. Assistant treasurers are not authorized to receive either remittances of money by express or drafts, for credit of the five per cent fund.

5. Drafts are not accepted by the agency for credit of the five per cent fund; if received, they are returned to the sender.

6. National bank depositaries are not authorized to receive deposits for credit of the five per cent. fund.

7. In case the amount due does not exceed the five per cent. deposit of the bank, the notes fit for circulation are forwarded to it by express, and the notes unfit for circulation are delivered to the Comptroller of the Currency for destruction and replacement with new notes, on the same day that the call is made. In cases of overdraft of the bank's five per cent. account, either the fit or unfit notes, or both, as the case may require, are held until the overdraft is made good.

8. The law requires the agency to return all notes fit for circulation redeemed by it to the respective associations by which they were issued, and to deliver those unfit for circulation to the Comptroller of the Currency for destruction, and no other disposition can be made of them.

9. When a national bank has made a deposit of legal-tender notes for the purpose of retiring a portion of its circulation, all of its notes redeemed, whether fit or unfit for circulation, are charged to that deposit until it is exhausted.

V. Five Per Cent. Redemption Fund.

1. Banks should charge all remittances for credit of their five per cent. account, including the original five per cent. deposit, to an account designated as the "Five per cent. redemption fund."

1586 2. Immediately on the receipt of the call or advice of redemption, "circulation outstanding" should be charged with the amount of both fit and unfit notes reported as redeemed, and the redemption fund credited. When the redemption is reimbursed, the redemption should be charged; when the notes fit for circulation are received by the bank, the circulation account should be credited, and the same course should be pursued when the incomplete currency, received from the Comptroller of the Currency in place of the unfit notes, is made ready for issue. By this method the five per cent. and circulation accounts of the bank may be made to agree at all times with those of the agency, and of the Comptroller of the Currency, except as regards remittances in transit.

3. Remittances for which returns are to be made in transfer checks or new United States currency should not be charged to the redemption fund.

4. National banks which have made deposits of legal-tender notes for the purpose of retiring a portion of their circulation under section 4 of the act of June 20, 1874, are required to maintain the five per cent. deposit only on the remainder of their circulation. The excess over the required amount is surrendered by the agency immediately on receipt of advice from the Comptroller of the Currency of the amount retired.

5. Banks may keep with the Treasurer any amount they choose in excess of the required five per cent. of their circulation, but they are not permitted to count such excess as a part of their lawful money reserve. It should be entered on their reports of their condition, under item 23, "Due from the United States Treasurer (other than five per cent. redemption fund)."

6. Remittances to reimburse for notes redeemed are credited "to make good" the five per cent. deposit; remittances which increase the deposit above the required amount are credited "in excess" of the five per cent. deposit; and remittances in payment of the required deposit on the original circulation of a bank, or on additional circulation issued to it, are credited "on account" of the five per cent. deposit.

VI. Express Charges.

1. The express charges on national bank notes received for redemption or credit, on United States currency returned for national bank notes redeemed, and on assorted national bank notes, fit for circulation, forwarded to the banks of issue, are advanced by the agency and afterwards assessed upon the several national banks in proportion to the amount of their circulation redeemed.

2. The charges for the transportation of incomplete currency forwarded to the banks by the Comptroller of the Currency are not defrayed by the agency. It is forwarded under a contract between the Comptroller and the express company, and the charges, at con-

tract rates, are required to be paid by the banks to which it is sent. The rates are twenty-five cents for each thousand dollars to each express company over whose lines the remittances pass.

3. The entire express charges on remittances of bank notes 1587 for redemption and returns, made in any other amounts than $1,000 or a multiple thereof, whether less or more than $1,000, must be prepaid; otherwise they are deducted from the proceeds of the remittances. Bank notes may, however, be sent to make good the five per cent. deposit of a bank at the expense of the agency, in any amounts for which the calls are made. Remittances for credit in anticipation of calls must be sent in even thousands of dollars.

4. The full express charges to their destination on fit notes returned to the banks of issue are prepaid by the agency, whether the banks are situated within or without the territory covered by the contract.

5. The contract with Adams Express Company extends to and includes all points within the United States "accessible through established express lines, reached by continuous railway connection," but does not extend westward beyond Omaha and Nebraska City, in Nebraska, and Atchison and Leavenworth, in Kansas, nor include the lines of Wells, Fargo & Co., in Missouri and Iowa. The contract covers the lines of the following express companies: Adams, American Merchants' Union, Central, Earl, Eastern, Harnden, Hope, Howard, National, New Jersey, Southern, Union, United States, and United States and Canada.

6. The express companies are liable for the loss or destruction of national bank notes forwarded to the agency under contract, except when the loss arises through the act of God or of the public enemy, and receipts of the express companies limiting their liability further than this need not be accepted by consignors.

VII. Incomplete Currency.

1. The issue of new circulating notes to national banks is under the exclusive control of the Comptroller of the Currency, and any inquiry in regard thereto should be addressed to him.

2. No new currency is ordered to be printed except on requisition from the banks, specifying the amounts and denominations desired. Banks usually order supplies in advance, from which the Comptroller remits, from time to time, new notes of their issue in return for their notes unfit for circulation destroyed.

3. Banks should advise the Comptroller of the denominations of their notes desired in return for their notes destroyed.

4. Banks should keep an account of the amount of their incomplete currency in the hands of the Comptroller, and should make requisitions for additional supplies a sufficient time in advance of the exhaustion of the currency previously ordered to cover the time necessary to have the new notes prepared by the engravers.

5. Banks are charged by the agency with the full amount of their notes unfit for cultivation delivered to the Comptroller, whether the exact amount is reissued by him or not. It sometimes happens that

the exact amount is not sent by him, because it cannot be 1588 made up of full sheets of notes. In such case the amount due should appear on the bank's books as a deficit in its circulation account, not as an excess in its five per cent. account.

VIII. ASSESSMENT FOR EXPENSES.

1. Under section 3 of the redemption act the expenses incurred by the agency for "the charges for transportation and the costs for assorting" the redeemed notes of national banks are assessed upon the several banks in proportion to their circulation redeemed, and are charged to them in their five per cent. accounts.

2. All of the express charges incurred are consolidated and assessed in proportion to the amount of the notes redeemed for each bank, and all of the other charges are assessed in proportion to the number of notes redeemed for each bank.

3. Denominational registers are kept of the notes redeemed for each bank, from which the amount and number of its notes redeemed are exactly computed.

4. The assessment is made by fiscal years, and is levied as soon after the end of each year (June 30) as the accounts can be settled and the computations made.

5. Remittances should be made for the amount of the assessments immediately on receipt of the notice thereof in the same manner as for notes redeemed. It is not sufficient for a bank to credit the amount to the five per cent. redemption fund on its books.

6. Banks which have made a deposit during the fiscal year for the retirement of all or a portion of their circulation are assessed only for the proportionate share of the expenses incurred in redeeming their notes prior to the making, or after the exhaustion, of the deposit.

A. U. WYMAN,
Treasurer U. S. and Redemption Agent.

TREASURY DEPARTMENT,
WASHINGTON, D. C., *May* 24, 1877.

Circular Concerning Express Charges on Fractional Currency Forwarded to the Treasurer of the United States for Redemption, and Returns Therefor.

The Treasurer of the United States has been directed, upon the receipt by him from any person of fractional currency in the sum of $500, or any multiple thereof, forwarded for redemption under the contract with Adams Express Company, to cause a shipment to be made to the person so forwarding it of a like amount of subsidiary silver coin, or United States notes, the expense of transportation each way to be paid by this Department.

Shipments as above indicated, however, will be made only to points in the United States reached through established express lines by continuous railway or steamboat communication.

Fractional currency thus forwarded should be directed to "Treasurer of the United States, Washington, D. C.," and should 1589 be put in wrappers of stout paper or cloth, tied with strong twine, secured with careful sealing, and plainly marked on the outside with the amount and nature of the contents, the full name and post-office address, including the State, of the consignor, and the fact that they are forwarded under the Government contract with Adams Express Company, thus:

$——. Fractional currency for redemption, under contract with Adams Express Company.

TREASURER OF THE UNITED STATES,
Washington, D. C.

From JOHN SMITH, *Smithville, Ohio.*

If the currency is sent in sums of less than $500, the sender must prepay all transportation charges.

National banks designated as U. S. depositaries have been requested to redeem all fractional currency that may be presented to them.

JOHN SHERMAN,
Secretary.

[Circular No. 21.]

TREASURY OF THE UNITED STATES,
WASHINGTON, *November* 15, 1877.

Regulations Governing the Redemption of Legal-Tender Notes, National Bank Notes, and Fractional Currency, the Issue of Fractional Silver, and the Issue and Redemption of Minor Coins of the United States.

The following regulations are issued for the information and guidance of all having transactions with this office pertaining to the redemption of currency and kindred subjects:

I. NEW LEGAL-TENDER NOTES.

1. New legal-tender notes are forwarded to assistant treasurers and designated depositaries of the United States upon their making requisition therefor upon the Treasurer, by letter, for such denominations as they desire, provided it appears that they are in need of funds. The mere overdraft of the Treasurer's account is not, however, considered as sufficient occasion for making requisition for new currency when the officer has on hand sufficient funds to meet current disbursements.

2. New legal-tender notes are furnished by the Treasurer to parties other than assistant treasurers and designated depositaries only in return for legal-tender notes which are defaced, mutilated, or otherwise unfit for circulation, forwarded to him in compliance with these regulations. Exchanges of new notes for other new notes of different denominations are not made, except in special cases where the public convenience seems to require it. In such cases permission to make the exchange must be obtained from the

Department prior to forwarding the notes, and the express 1590 charges both ways, at private rates, must be borne by the owners of the notes.

3. New legal-tender notes are not furnished in any case in return for certificates of deposit issued by assistant treasurers or designated depositaries of the United States, or national bank depositaries, or for bankers' drafts.

II. Redemption of Legal-Tender Notes and Fractional Currency.

1. *Condition of notes redeemable by the Treasurer, the several assistant treasurers, and depositaries of the United States.*

Legal-tender notes mutilated not to the extent of one-tenth, and fractional notes mutilated not to the extent of one-fifth, are redeemable at full face value.

2. *Condition of mutilated notes redeemable by the Treasurer United States only.*

LEGAL-TENDER NOTES.

1. Legal-tender notes mutilated to the extent of one-tenth, but not two-tenths, are redeemable at nine-tenths of full face value; two-tenths, but not three-tenths, at eight-tenths of their face value; three-tenths, but not four-tenths, at seven-tenths of their face value; four-tenths, but not one-half, at six-tenths of their face value. Fragments of notes, each constituting clearly one-half, are redeemable at one-half the full face value of such whole notes.

2. Fragments less than half are redeemed only when accompanied by an affidavit executed in accordance with the requirements of paragraph 3 of this section, except when they together constitute more than one-half a note, and it appears, either from the notes themselves or from an affidavit made in conformity to the following paragraph, that they are actually parts of one original note.

3. Notes mutilated as described in the preceding paragraphs, accompanied by an affidavit from the owner and from such other persons as have knowledge of the facts, that the missing portions have been totally destroyed, are, if the proof furnished is satisfactory, redeemed at the full face value of such whole notes. The affidavit must state the cause and manner of the mutilation, and the character of the affiants must be certified to be good by a magistrate or other public officer. The Treasurer will exercise such a discretion under this regulation as may seem to him needful to protect the United States from fraud.

4. Unredeemed fragments less than half are retained by the Treasurer; counterfeit notes are branded and returned.

FRACTIONAL CURRENCY.

Fractional notes mutilated to the extent of one-fifth, but not two-fifths, are redeemable at four-fifths of their full face value; two-fifths, but not one-half, are redeemable at three-fifths of their face value.

Paragraphs 2, 3, and 4 of the preceding section apply also to fractional currency.

1591 III. Redemption of National Bank Notes.

1. The notes of national banks, other than gold banks, may be forwarded to the Treasurer United States for redemption, under the contract with Adams Express Company, in sums of $1,000, or any multiple thereof, by any person, company, firm, bank, or corporation situated within the territory covered by the contract.

Remittances from banks, and other parties, situated without the territory covered by the contract should be marked "under contract with Adams Express Company, from ———" (the point of connection with that company); the charges should be prepaid to that point, and the bills therefor should be sent to the Treasurer United States for approval and reimbursement to the consignors, by Treasury drafts.

Remittances of any other amounts than $1,000, or a multiple thereof, are not received for redemption under the contract, but the charges thereon must be prepaid by the consignors.

2. Notes equaling or exceeding three-fifths of their original proportions, if in such condition that their genuineness can be clearly ascertained, and if the name of the bank and the signature of one of its officers are distinguishable, are redeemed for their full face value. Notes, the signatures of which have evidently become illegible from wear, are not rejected on that account.

3. Fragments less than three-fifths are not redeemed by the Treasurer United States, but should be presented for redemption to the banks by which the notes were issued. If redeemed by the banks of issue, they are accepted by the Treasurer United States at the valuation placed on them by the banks. This rule applies to fragments which the Comptroller of the Currency has certified that he will accept for an amount less than their face value, if redeemed by the bank of issue. The regulations subjecting United States currency to discount do not apply to national bank notes, except notes of failed and liquidating banks.

4. The packages, when received at this office, are charged to and receipted for by the counters, with the seals unbroken, and each counter is required to count, return, and obtain a receipt for the contents of each package before receiving another. An inventory or schedule of the contents, according to the amounts marked on the straps, is made immediately on opening the package, and the contents of each strap are proved separately and put aside, if found to be correct. If discrepancies are found they are noted on the proper strap, which is returned to the owner. "Shorts" are at once reported and verified by the teller in charge. The packages are charged to the counters by the amounts on the wrappers, and any discrepancy between this amount and the contents is reported as an "over" or a "short" by inventory.

5. Notes of a bank's own issue, redeemed by it, should be forwarded directly to the Comptroller of the Currency, with the express

charges thereon prepaid. This rule does not apply to notes of a bank's own issue, received by it in the ordinary course of business, mixed with other bank notes.

1592 6. The law officers of the Department having decided that national bank notes, stolen when unsigned, and put in circution with forged signatures, are not obligatory promissory notes of the bank, under section 5182 of the Revised Statutes, such notes are not redeemed at this office.

7. Notes of national banks that have failed, or gone into voluntary liquidation, are received, redeemed, and forwarded to the Treasurer by the officers and banks, before mentioned, for retirement under these rules, in the same manner and on the same terms as United States notes. Lists of such banks are furnished by the Treasurer.

IV. MODE OF TRANSMISSION TO THE TREASURER.

The observance of the following regulations in the transmission of currency to the Treasury is of the highest importance to the Department, and will greatly facilitate the making of returns:

1. When a person making a remittance, either by mail or by express, fails to give his full name and post-office address, including the State, the remittance is retained until the name and address are furnished, together with a satisfactory description of the package claimed.

2. Legal-tender notes, fractional currency, and national bank notes should be put up in separate packages and accompanied by separate letters of advice. When the amount to be sent at one time exceeds eight thousand notes, the same should be put in several packages of not exceeding eight thousand notes each, and marked A, B, C, etc., respectively.

3. The money in each package should be assorted by denominations, and put in paper straps (no strings or rubber bands) at least one inch in width. One hundred notes should be placed in each strap, and the strap should be plainly marked with the amount and denomination of the contents.

4. A letter of advice, or inventory, describing the contents by parcels and amounts, and total footing written on not less than half a sheet of commercial note paper, should be inclosed with the packages. It must give the address of the party sending and the disposition to be made of the proceeds, or how returns therefor shall be made.

5. The package thus prepared, if sent by express, should be sealed up in stout paper and addressed to the Treasurer of the United States. It should be plainly marked on the outside with the owner's name and full address, the amount inclosed, and the nature of the contents—whether legal-tenders, fractional currency, or national bank notes—the disposition to be made of the proceeds, and, if so, that the same is forwarded under Government contract, thus:

$——. Legal-tender notes, fractional currency, national bank
notes, as the case may be,
Under Government contract with Adams Express Company.
TREASURER UNITED STATES,
From JOHN SMITH, *Smithville, Va.* *Washington, D. C.*
"Returns to be credited 5 per cent. account.
"Returns to be made in currency"—or other required disposition.

1593 6. All remittances of money by mail for redemption must be addressed to the "Treasurer of the United States, Washington, D. C."

7. Under the act of January 31, 1873, abolishing the franking privilege, all letters containing such remittances must be prepaid with the full legal rate of postage, the same as ordinary letters. Letters not prepaid are not mailed to their destination, but are sent to the Dead Letter Office. The postage on all letters whatever must be prepaid.

8. It is, however, the duty of postmasters to register free of charge all letters containing currency of the United States addressed to the Treasurer for redemption, on which the postage has been fully prepaid, and all letters containing new currency returned by him therefor. It is recommended that all such letters be registered, as the registration is a protection against loss.

9. Remittances to the Treasurer by mail are invariably at the risk of the owners. All communications to the Treasurer, in regard to packages ascertained to have been lost in transmission by mail, are referred for investigation to the Second Assistant Postmaster General, to whom any subsequent inquiry on the subject should be addressed.

V. RETURNS, HOW MADE.

For Remittances by Express.

1. For United States or fractional currency, sent in any amounts, returns will be made in new United States notes.

2. For United States notes, national bank notes, or fractional currency sent in multiples of $1,000, fractional silver will be returned from the mint.

3. For fractional currency sent in multiples of $500, fractional silver will be sent from the Mint.

4. For national bank notes sent in multiples of $1,000, United States notes will be returned to the sender, or returns will be made by the Treasurer's check upon the assistant treasurer United States in the city from which the remittance came, if New York, Philadelphia, or Boston.

5. For United States notes, fractional currency, or national bank notes, upon which the express charges have been prepaid at private rates, returns will be made by the Treasurer's check, if so requested, payable in currency, or by his check, payable in fractional silver, drawn as the shipper shall request, on any assistant treasurer United

States with whom there is such a transfer account, and payable to the order of the sender or of his correspondent.

6. Shipments as above indicated, however, will be made only to points in the United States reached through established express lines by continuous railway or steamboat communication.

For Remittances by Mail.

1594 1. For United States notes or fractional currency, in amounts less than five (5) dollars, new United States notes or fractional silver will be returned at the owner's risk, free of charge, by registered mail.

2. For United States notes or fractional currency, in amounts of five (5) dollars and over, returns will be made by transfer check on the assistant treasurer United States in New York, Boston, Philadelphia, New Orleans, or San Francisco, or by silver check on the above points, or on Chicago, Cincinnati, or St. Louis, as the sender may request, or in new United States notes or fractional silver (not to exceed twenty (20) dollars) by registered letter, free of expense to the owner.

VI. EXPRESS CHARGES.

Express Charges paid by the Government.

1. On remittances of public money between the offices of the Treasurer and assistant treasurers and depositaries, except transfers from national banks.

2. On national bank notes sent to the Treasurer for redemption. This does not apply to notes of banks failed, in liquidation, or reducing circulation.

3. On fractional currency sent to the Treasurer for redemption in multiples of $500, and on returns therefor.

4. On silver sent from the Mint, in multiples of $1,000, on orders of the Treasurer; and on silver sent from the Mint, in multiples of $500, for fractional currency redeemed by the Treasurer.

5. On minor coins issued by the Mint in Philadelphia in exchange for United States currency, sight drafts on New York or Philadelphia, post-office money orders, or in return for minor coins redeemed.

Express Charges not paid by the Government.

1. On fractional currency sent in a less sum than $500, the charges must be prepaid by the sender.

2. On national bank notes not sent in multiples of $1,000, the charges both ways will be deducted at contract rates.

3. On minor coins sent to the Mint in Philadelphia, the Treasurer, or any assistant treasurer or depositary of the Unites for redemption, the charges must be prepaid by the sender.

VII. ISSUE OF FRACTIONAL SILVER.

When Fractional Silver is furnished at the Expense of the Mint.

1. Upon the receipt at this office from any person of an original (duplicate will not do) certificate issued by any assistant treasurer, designated depositary, or national band depositary, that a deposit of currency has been made to the credit of the Treasurer in general account of the sum of one thousand dollars ($1,000), or any multiple thereof, not exceeding ten thousand dollars ($10,000).

2. Upon the receipt at this office of fractional currency, in the sum of five hundred dollars ($500), or any multiple thereof.

1595 3. For United States notes or national bank notes received by the Treasurer in multiples of one thousand dollars ($1,000).

VIII. ISSUE AND REDEMPTION OF MINOR COIN.

Issue of Minor Coins.

1. The minor coins of the United States of the denominations of one, three, and five cents are issued and forwarded free of expense, upon application to the Superintendent of the Mint at Philadelphia, for lawful money of the United States, in the sums of twenty (20) dollars, or multiples thereof. Remittances may be made by money orders or sight drafts to the order of said Superintendent, and payable in New York or Philadelphia.

2. The Treasurer and assistant treasurers are authorized to pay out, for legal-tender notes, any minor coins not needed in the current business of their offices.

Redemption of Minor Coins.

1. Coins of copper-bronze and copper-nickel may be presented in sums of twenty dollars, or multiples thereof, assorted by denominations and issues, at the Mint in Philadelphia, to the Treasurer, any assistant treasurer, or designated depositary, for redemption in lawful money.

2. A letter of advice should accompany the package, stating the amount and kind of coin and the name of the owner. Payment for the same, when counted and examined, will be made in currency, minor coin, or by check on New York, Philadelphia, Boston, New Orleans, or San Francisco, at the option of the shipper.

3. If the coins are not presented at the counter, transportation charges should be prepaid; the charges on coin in return will be paid by the Mint.

4. Mutilated minor coin will not be redeemed or exchanged.

IX. GENERAL INSTRUCTIONS.

1. By law (19 Statutes, 65) "all United States officers charged with the receipt or disbursement of public moneys, and all officers of national banks, shall stamp or write in plain letters the word 'counterfeit,' 'altered,' or 'worthless,' upon all fraudulent notes issued

in the form of and intended to circulate as money, which shall be presented at their places of business; and if such officers shall wrongfully stamp any genuine note of the United States, or of the national banks, they shall, upon presentation, redeem such notes at the face value thereof."

2. The Treasurer or any assistant treasurer of the United States will receive from any public officer, at the expense of the depositor, for credit in account, such silver coins of the United States as he receives in the regular course of business. Silver coin mutilated by clipping or perforating will not be received except at the bullion value, to be ascertained at the Mint.

3. In case of the loss or destruction of one of his checks, and
upon application for a duplicate, the Treasurer stops pay-
1596 ment of the original check, and furnishes the applicant for
a duplicate with a form of bond of indemnity, upon return
of which, properly executed, a duplicate is issued.

4. Assistant treasurers and designated depositaries of the United States, in reporting in their statements of liabilities and assets the legal-tender notes, the old and defaced legal-tender notes, and the national bank notes on hand, should observe the following classification: $500 and $1,000 notes should be classified as "large" notes; $50 and $100 notes as "medium;" $5, $10, and $20 notes as "small;" and $1 and $2 notes as "1's and 2's."

5. The Government contract with Adams Express Company extends to and includes all points within the United States "accessible through established express lines, reached by continuous railway connection," but does not extend Westward beyond Omaha and Nebraska City, in Nebraska, and Atchison and Leavenworth, in Kansas, nor include the lines of Wells, Fargo & Co., in Missouri and Iowa. The contract covers the lines of the following express companies: Adams, American Merchants' Union, Central, Earl, Eastern, Harnden, Hope, Howard, National, New Jersey, Southern Union, United States, and United States and Canada.

Compliance with the foregoing regulations is enjoined on all officers of the Department, and their observance will be expected of all making remittances to this office.

JAS. GILFILLAN,
Treasurer U. S.

Approved:
JOHN SHERMAN,
Secretary of the Treasury.

[Circular No. 29.]

TREASURY OF THE UNITED STATES,
WASHINGTON, *July* 1, 1877.

Regulations Governing the Redemption of National Bank Notes.

The following regulations are adopted in lieu of all which have heretofore been issued governing the redemption of national bank notes by the Treasurer of the United States, under the provisions of "An act fixing the amount of United States notes, providing for a redistribution of the national bank currency, and for other purposes," approved June 20, 1874 (18 Statutes, 123):

I. The Redemption Act.

The provisions of the said act relating to the redemption of national bank notes are as follows:

"Sec. 2. That section thirty-one of 'the national bank act' be so amended that the several associations therein provided for shall not hereafter be required to keep on hand any amount of money whatever, by reason of the amount of their respective circulations; but the moneys required by said section to be kept at all times on
1597 hand shall be determined by the amount of deposits in all respects, as provided for in the said section.

"Sec. 3. That every association organized or to be organized under the provisions of the said act, and of the several acts amendatory thereof, shall at all times keep and have on deposit in the Treasury of the United States, in lawful money of the United States, a sum equal to five per centum of its circulation, to be held and used for the redemption of such circulation, which sum shall be counted as a part of its lawful reserve, as provided in section two of this act; and when the circulating notes of any such associations, assorted or unassorted, shall be presented for redemption, in sums of one thousand dollars or any multiple thereof, to the Treasurer of the United States, the same shall be redeemed in United States notes. All notes so redeemed shall be charged by the Treasurer of the United States to the respective associations issuing the same, and he shall notify them severally, on the first day of each month, or oftener, at his discretion, of the amount of such redemptions; and whenever such redemptions for any association shall amount to the sum of five hundred dollars, such association so notified shall forthwith deposit with the Treasurer of the United States a sum in United States notes equal to the amount of its circulating notes so redeemed. And all notes of national banks worn, defaced, mutilated, or otherwise unfit for circulation, shall, when received by any assistant treasurer, or at any designated depositary of the United States, be forwarded to the Treasurer of the United States for redemption as provided herein. And when such redemptions have been so reimbursed, the circulating notes so redeemed shall be forwarded to the respective associations by which they were issued; but if any of such notes are worn, mutilated, defaced, or rendered otherwise unfit for use, they shall be forwarded to the Comptroller of the Currency and destroyed and replaced as now provided by law: *Provided,* That each of said associations shall reimburse to the Treasury the charges for transportation and the costs for assorting such notes; and the associations hereafter organized shall also severally reimburse to the Treasury the cost of engraving such plates as shall be ordered by each association respectively; and the amount assessed upon each association shall be in proportion to the circulation redeemed, and be charged to the fund on deposit with the Treasurer: *And provided further*, That so much of section thirty-two of said national bank act requiring or permitting the redemption of its circulating notes elsewhere than at its own counter, except as provided for in this section, is hereby repealed."

II. Redemption of National Bank Notes.

1. Any holder of national bank notes may forward or present them to the Treasurer of the United States for redemption in sums of $1,000 or any multiple thereof.

2. Assistant treasurers of the United States are required to select from the funds received by them all national bank notes unfit
for circulation, and to forward them to the Treasurer of the
1598 United States, from time to time, in multiples of $1,000, for
their credit in general account.

3. The notes must be enclosed in strong paper straps, securely fastened, and the amount in each strap must be printed or written thereon. Not less than one hundred, nor more than two hundred, notes should be placed in a strap.

4. The packages must be put up in boxes or in wrappers of stout paper, tied with strong twine, carefully sealed with the consignor's own seal, plainly marked on the face of the outer wrapper with the amount and nature of the contents, and the full name of the consignor, and addressed to the Treasurer of the United States, Washington, D. C., thus:

$——. National bank notes for redemption.
Treasurer of the United States,
From First National Bank, *Washington, D. O.*
Smithville, Ohio.

5. A letter of advice, giving an inventory of the contents by straps and amounts and the disposition to be mode of the proceeds, must be put inside of the package, and a duplicate letter be sent by mail to the Treasurer on the day the remittance is forwarded.

6. United States currency and national bank notes must be forwarded in separate packages, marked with a description of the contents, and accompanied by separate letters of advice.

7. Notes equaling or exceeding three-fifths of their original proportions, and bearing the name of the bank and the signature of one of its officers, are redeemed for their full face value.

8. Notes of which less than three-fifths remain, or from which both signatures are lacking, are not redeemed by the Treasurer, but should be presented for redemption to the bank of issue.

9. Fragments redeemed by the bank of issue for less than face value are accepted by the Treasurer only when their valuation is equal to the face value of a note of some denomination issued by the bank, or some multiple thereof, and are delivered to the Comptroller of the Currency as notes of such denomination. The required valuation may be made up of several fragments of notes of the same or different denominations. Fragments not clearly more than two-

fifths are accepted only on proof that the missing portions have been entirely destroyed.

10. It having been decided that national bank notes stolen when unsigned, and put in circulation with forged signatures, are not obligatory promissory notes of the banks, under section 5181 of the Revised Statutes, they are not redeemed by the Treasurer. The appropriation of $5,000 made by the act of June 20, 1878, for the redemption of such notes as were stolen from the office of the Comptroller of the Currency has been exhausted.

11. Returns for national bank notes redeemed are made in any of the following ways, at the option of the consignors:

I. By a shipment by express of new United States notes of such denominations as may be asked for, with the express charges
1599 prepaid to their destination. Exchange cannot be furnished for bank notes redeemed, nor the proceeds remitted to any other parties than the consignors, except when the express charges on the bank notes are prepaid.

II. By a shipment by express from the United States Mint of standary silver dollars in a sum of $500, or any multiple thereof, with the express charges prepaid.

III. By a shipment by express of subsidiary silver coin at the expense of the consignee.

IV. By transfer-check on the assistant treasurer U. S. in the city from which the remittance is forwarded, in return for remittances from New York, Boston, and Philadelphia.

V. By transfer-check on any assistant treasurer U. S., forwarded either to the consignor or to his correspondent, in return for remittances on which the express charges have been prepaid.

12. National bank depositaries may forward national bank notes to the Treasurer for their credit as transfers of funds, but the express charges thereon will be deducted from the proceeds.

13. Assistant treasurers are not required to redeem national bank notes, but they should receive in payment of public dues and on account of transfers of funds all notes redeemable at their full face value under these regulations.

III. DISPOSITION OF NATIONAL BANK NOTES.

1. Packages of national bank notes received for redemption are charged to, and receipted for by, the counters, with the seals unbroken; and the counters are required to count, return, and obtain a receipt for the contents of each package before receiving another. An inventory of the contents according to the amounts marked on the straps is made immediately on opening the package, and the contents of each strap are separately proved. Discrepancies are noted on the proper strap, which is returned to the owner. "Shorts" are at once reported and verified by the teller in charge. The packages are charged to the counters by the amounts on the wrappers, and any discrepancy between these amounts and the contents is reported as an "over" or a "short" by inventory.

2. The redeemed notes of the several national banks are assorted,

prepared for delivery, charged to their five per cent. accounts, and advices of the redemption thereof forwarded to them, in regular rotation, following an alphabetical arrangement; and no departure from this practice can be made for the accommodation of any bank. If the assorted notes of any bank, either fit or unfit for circulation, amount to $500 or more, they are reported on the advices of redemption; if they amount to less than $500 they are retained for additions from subsequent redemptions. It is impracticable to report the redemptions of notes of either class in sums of even thousands of dollars.

3. If the amount due does not exceed the five per cent. deposit of the bank, the notes fit for circulation are forwarded to it by express, and the notes unfit for circulation are delivered to the
1600 Comptroller of the Currency, on the same day that the advice
of redemption is issued. If the bank's five per cent. account is overdrawn by the redemption, a sufficient amount of the notes to cover the overdraft is held until it is made good.

4. The law requires the return of the redeemed notes fit for circulation to the respective associations by which they were issued, and the delivery of those unfit for circulation to the Comptroller of the Currency for destruction and replacement with new notes, and no other disposition can be made of them.

5. All of the redeemed notes of banks which have made a deposit of United States notes for the retirement of all or a portion of their circulation are charged to that deposit until it is exhausted, and no advices of redemption are issued therefor.

6. Upon a change in the title of a national bank all of the redeemed notes issued under the former title are destroyed.

IV. FIVE PER CENT. REDEMPTION FUND.

1. Every newly-organized national bank is required, immediately upon the receipt of its circulation from the Comptroller of the Currency, to deposit in the Treasury of the United States a sum equal to five per centum thereof, in lawful money of the United States, "to be held and used for the redemption of such circulation."

2. A similar deposit is required on all additional circulation issued to national banks.

3. In estimating the circulation upon which the deposit is required, the bank must include all notes of its issue in its possession, as well as those in actual circulation.

4. Upon receipt of the advices of redemption, national banks are required to remit forthwith an amount sufficient to make good their five per cent. deposits, without awaiting the receipt of the notes fit for circulation, or the certificate of the destruction of the notes unfit for circulation.

5. Banks which have made deposits of United States notes for the retirement of a portion of their circulation, under section 4 of the act of June 20, 1874, and those whose notes have been destroyed without reissue and a proportionate amount of their bonds released, are required to maintain the five per cent. deposit only on the remainder. The excess over the required amount is surrendered im-

mediately on receipt from the Comptroller of the Currency of advice of the amount retired. Only reductions of circulation which are accompanied by a release of bonds are regarded.

6. Banks which have resolved to go into liquidation must maintain the full five per cent. until United States notes are deposited for the retirement of their circulation; but all of their notes redeemed, whether fit or unfit for circulation, are destroyed. When the deposit is made the excess of the five per cent. deposit over the amount is required to cover the expenses of redemption previously incurred is surrendered.

7. Banks may keep with the Treasurer any amount they choose in excess of the required five per cent., but they are not
1601 permitted to count such excess as a part of their lawful money reserve. It should be entered on their reports of their condition, under item 23: "Due from United States Treasurer (other than five per cent. redemption fund)."

8. Remittances for credit of the five per cent. redemption fund may be made in any of the following ways:

I. By a check drawn on New York, payable to the order of the assistant treasurer of the United States in New York, forwarded directly to that officer, with instructions to deposit the same on account of the five-per cent. fund, and to forward the certificate of deposit to the Treasurer of the United States.

II. By a deposit of United States notes with the assistant treasurer of the United States in New York, Boston, Philadelphia, New Orleans, Baltimore, Chicago, Cincinnati, or St. Louis, on account of the five-per-cent. fund. Banks not situated in one of the above-named cities should make the deposit through their correspondents. The certificate of deposit must be forwarded directly to the Treasurer of the United States by the bank making the deposit, as credit cannot be given until it is received.

III. By a remittance of United States notes, addressed to the Treasurer of the United States, marked "United States notes for credit of the five-per-cent. fund." The express charges, if not prepaid, will be deducted from the proceeds of the remittances at Government contract rates.

9. Remittances of fractional currency in sums of $500, or any multiple thereof, may be made under the contract with the Adams Express Company, for credit of the five-per-cent. fund, at the expense of the Treasury.

10. The law requiring the five-per-cent. fund to be maintained in United States notes, standard silver dollars cannot be accepted for the purpose.

11. National bank depositaries are not authorized to receive deposits for credit of the five-per-cent. fund.

12. Assistant treasurers are not authorized to receive remittances by express on account of the five-per-cent. fund; and only the assistant treasurer in New York is authorized to receive checks on that account.

13. It is not necessary to advise the Treasurer of remittances on

account of the five-per-cent. fund, except when they are made directly to him.

14. Remittances which cover in whole or in part sums due for notes redeemed, or for the expenses of redemption, are acknowledged as credited "to make good" the five-per-cent. deposit; remittances which increase the deposit above the required amount are acknowledged as credited "in excess" of the required deposit; and remittances in payment of the required five per cent. on the original circulation of a bank, or on additional circulation issued to it, are acknowledged as credited "on account" of that deposit.

15. National banks should make only such deposits on account of
the five-per-cent. fund as they desire to have applied in the
1602 redemption of their notes, or in payment of the expenses of
redemption.

16. Acknowledgments of remittances made by one bank for credit of the five-per-cent. account of another are sent only to the bank whose account is credited.

17. National banks should charge the original five-per-cent. deposit, and all subsequent remittances for credit of the five-per-cent. account, to an account designated as the "five-per-cent. redemption fund."

18. On receipt of the advice of redemption "circulation outstanding" should be charged with the amount of both fit and unfit notes reported as redeemed, and the redemption fund credited. When the redemption is reimbursed, the redemption fund should be charged. When the notes fit for circulation are received by the bank, the circulation account should be credited; and the same course should be pursued when the incomplete currency, received from the Comptroller of the Currency in place of the unfit notes, is made ready for use.

19. Remittances for redemption and returns should not be charged to the five-per-cent. redemption fund.

V. Express Charges.

1. The charges for the transportation of national bank notes to the Treasurer for redemption must be borne by the party making the remittance. When not prepaid they are deducted from the proceeds of the remittance.

2. The charges for the transportation of incomplete currency forwarded by the Comptroller of the Currency must be paid by the banks to which it is sent.

3. The full express charges on national bank notes forwarded for redemption by assistant treasurers; on United States notes returned in sums of $1,000, or any multiple thereof, for national bank notes redeemed; and on assorted national bank notes, fit for circulation, forwarded to the banks of issue, are advanced out of the five-per-cent. fund, and afterwards assessed upon the several national banks in proportion to the amount of their circulation redeemed. No charges should be exacted from banks by the express company for their notes fit for circulation forwarded to them.

4. The Government contract rate for the transportation of United

States notes returned for national bank notes redeemed, and of assorted national bank notes fit for circulation, forwarded to the banks of issue, is 25 cents per $1,000, or fractional part thereof, to the Adams Express Company, and 35 cents per $1,000, or fractional part thereof, to every other separate express company over whose lines the same may be carried, except to points in the States of Arkansas and Texas, when the rate is $1.50 per $1,000.

5. The rate of the transportation of national bank notes to Washington for redemption, when the charges are deducted from the proceeds of remittance, is $37½ cents per $1,000, or fractional part
1603 thereof, to each express company over whose lines the remittances pass, except from points in the States of Arkansas and Texas.

6. The contract extends to all points within the United States "accessible through established express lines reached by continuous railway communication," not lying westward of Omaha and Nebraska City, in Nebraska, and Atchison and Leavenworth, in Kansas, but does not embrace sea or river transportation of any kind.

7. The Treasurer has no control over the rates exacted when the charges are prepaid, or when the remittances are from points without the limits of the Government contract.

8. No charge is made for the amount of the express charges inclosed with a remittance of even thousand dollars in national bank notes when the package is thus marked:

$10,000 national bank notes for redemption.
$3.75 express charges.

9. United States notes returned for remittances of national bank notes in any other amounts than even thousands of dollars are forwarded at the expense of the consignee.

VI. Assessment for Expenses.

1. Under section 3 of the redemption act, the expenses incurred for "the charges for transportation and the costs for assorting," the redeemed notes of national banks are assessed upon the several banks in proportion to their circulation redeemed, and are charged to them in their five per cent. accounts. The assessment is made by fiscal years, and is levied as soon after the end of each year (June 30), as the accounts can be settled and the computation made.

2. Under the head of "charges for transportation" are included the express charges on national bank notes received from assistant treasurers; on United States notes forwarded in return for national bank notes redeemed, and on national bank notes fit for circulation forwarded to the banks of issue. Under the head of "costs for assorting" are included all other expenses, embracing salaries, furniture, printing, stationery, and incidental expenses.

3. The charges for transportation are assessed in proportion to the amount, and the costs for assorting in proportion to the number of notes redeemed for each bank. Denominational registers

kept, from which the amount and number of the note redeemed for each bank are actually computed.

4. Remittance should be made for the amount of the assessment immediately on receipt of the notice thereof, in the same manner as for notes redeemed, unless there is a sufficient excess to the credit of the bank in the five per cent. fund to cover it.

5. Banks which have made a deposit for the retirement of all or a portion of their circulation are assessed only for the proportionate share of the expenses incurred in redeeming their notes prior to the making, or after the exhaustion, of the deposit.

VII. INCOMPLETE CURRENCY.

1. The issue of new circulating notes to national banks is
1604 under the control of the Comptroller of the Currency, and
all inquiries and requests in regard thereto should be addressed to him.

2. New currency is ordered to be printed only on requisition from the banks, specifying the amounts and denominations desired. Banks should keep an account of the amount of the incomplete currency in the Comptroller's Office, and should make requisitions on him for the printing of additional supplies a sufficient time in advance of the exhaustion of those previously ordered to cover the time required for the preparation of the new notes by the engravers.

3. Banks are charged with the full amount of their notes unfit for circulation delivered to the Comptroller, whether the exact amount is reissued by him or not. Sometimes the exact amount is not sent, because it cannot be made up of full sheets of notes. The amount due should appear on the bank's books as a deficit in its circulation account, and not as an excess in its five per cent. account.

JAS. GILFILLAN,
Treasurer U. S.

[Circular No. 30.]

TREASURY OF THE UNITED STATES,
WASHINGTON, *August* 15, 1879.

Regulations Governing the Issue and Redemption of United States Notes and of the Fractional Silver and Minor Coins of the United States; the Issue of Standard Silver Dollars, and the Redemption of Fractional Currency and National Bank Notes.

The following regulations are issued for the information and guidance of all having transactions with this office pertaining to the issue and redemption of currency, and of silver and minor coins of the United States:

I. ISSUE OF UNITED STATES NOTES.

1. New United States notes are forwarded to assistant treasurers of the United States upon their making requisition on the Treasurer for such denominations as they desire, provided they are in need of funds.

2. New United States notes are furnished by the Treasurer to others than assistant treasurers only in return for United States notes unfit for circulation, and fractional currency, fractional silver coins, minor coins, and national bank notes, forwarded in compliance with these regulations, and for bankers' drafts on New York, when collected. Exchanges of new notes for notes of other denominations are made only when the public convenience requires. Permission must be obtained from the Treasurer prior to forwarding the notes, and the express charges, both ways, must be borne by the owners.

1605 3. New United States notes are not furnished for certificates of deposit issued by assistant treasurers or national bank depositaries, or for bankers' drafts on other points than New York.

II. Redemption of United States Notes and Fractional Currency.

1. *Condition of Notes redeemable by the Treasurer and the several Assistant Treasurers of the United States.*

United States notes mutilated not to the extent of one-tenth, and fractional notes mutilated not to the extent of one-fifth, are redeemable at full face value.

2. *Condition of Mutilated Notes redeemable by the Treasurer of the United States only.*

UNITED STATES NOTES.

1. United States notes mutilated to the extent of one-tenth, but not two-tenths, are redeemable at nine-tenths of full face value; two-tenths, but not three-tenths, at eight-tenths of their face value; three-tenths, but not four-tenths, at seven-tenths of their face value; four-tenths, but not one-half, at six-tenths of their face value. Fragments of notes, each constituting clearly one-half, are redeemable at one-half the full face value of such whole notes.

2. Fragments less than half are redeemable only when accompanied by an affidavit executed in accordance with the requirements of paragraph 3 of this section, except when they together constitute more than one-half a note, and it appears, either from the notes themselves or from an affidavit made in conformity to the following paragraph, that they are actually parts of one original note.

3. Notes, mutilated as described in the preceding paragraphs, accompanied by an affidavit from the owner and from such other persons as have knowledge of the facts, that the missing portions have been totally destroyed, are, if the proof furnished is satisfactory, redeemed at the full face value of such whole notes. The affidavit must state the cause and manner of the mutilation, and must be sworn and subscribed before an officer qualified to administer oaths, who must affix his official seal thereto, and the character of the affiants must be certified to be good by a magistrate or other public officer. The Treasurer will exercise such a discretion under

this regulation as may seem to him needful to protect the United States from fraud.

4. Unredeemed fragments are rejected and returned; counterfeit notes are branded and returned.

FRACTIONAL CURRENCY.

Fractional notes mutilated to the extent of one-fifth, but not two-fifths, are redeemable at four-fifths of their full face value; two-fifths, but not one-half, are redeemable at three-fifths of their face value.

Paragraphs 2, 3, and 4 of the preceding section apply also to fractional currency.

1606 III. Redemption of National Bank Notes.

1. Any holder of national bank notes may forward or present them to the Treasurer of the United States for redemption in sums of $1,000, or any multiple thereof.

2. Notes equaling or exceeding three-fifths of their original proportions, and bearing the name of the bank and the signature of one of its officers, are redeemed at their full face value.

3. Notes of which less than three-fifths remain, or from which both signatures are lacking, are not redeemed by the Treasurer, but should be presented for redemption to the bank of issue.

4. Fragments redeemed by the bank of issue for less than face value are accepted by the Treasurer only when their valuation is equal to the face value of a note of some denomination issued by the bank, or some multiple thereof, and are delivered to the Comptroller of the Currency as notes of such denomination. The required valuation may be made up of several fragments of notes of the same or different denominations. Fragments not clearly more than two-fifths are accepted only on proof that the missing portions have been entirely destroyed.

5. It having been decided that national bank notes, stolen when unsigned, and put in circulation with forged signatures, are not obligatory promissory notes of the banks under section 5182 of the Revised Statutes, they are not redeemed by the Treasurer.

6. Notes of national banks that have failed, or gone into voluntary liquidation, are redeemed under these rules in the same manner and on the same terms as United States notes.

IV. Mode of Transmission to the Treasurer.

The following regulations must be observed in the transmission of currency to the Treasurer:

1. When a person making a remittance, either by mail or by express, fails to give his full name and post office address, including the State, the remittance is retained until the name and address are furnished, together a satisfactory description of the package claimed.

2. United States notes, fractional currency, and national bank notes should be put up in separate packages and be accompanied by

separate letters of advice. When the amount to be sent at one time exceeds eight thousand notes, the same should be put up in several packages of not exceeding eight thousand notes each, and marked A, B, C, etc., respectively.

3. United States notes and fractional currency should be assorted by denominations and put up in paper straps at least one inch in width. Strings and rubber bands should not be used. One hundred notes should be placed in each strap, and the strap should be plainly marked with the amount and denomination of the contents.

4. A letter of advice, or inventory, describing the contents by parcels and amounts, and total footing, written on not less than half a sheet of commercial note paper, should be inclosed with
1607 each package. It must give the address of the party sending, and the disposition to be made of the proceeds.

5. The package thus prepared, if sent by express, should be sealed up in stout paper and addressed to the Treasurer of the United States. It should be plainly marked on the outside with the owner's name and full address, the amount inclosed, and the nature of the contents, whether United States notes, fractional currency, or national bank notes, the disposition to be made of the proceeds, and that the same is forwarded under Government contract, if such be the case.

6. All remittances of money by mail for redemption must be addressed to the "Treasurer of the United States, Washington, D. C."

7. It is the duty of postmaster to register free of charge all letters containing currency of the United States addressed to the Treasurer for redemption, on which the postage has been fully prepaid, and all letters containing new currency returned to him therefor. It is recommended that all such letters be registered as a protection against loss.

8. Remittances to the Treasurer by mail are invariably at the risk of the owners. All communications to the Treasurer, in regard to packages lost in transmission by mail, are referred for investigation to the Second Assistant Postmaster General, to whom any subsequent inquiry on the subject should be addressed.

V. ISSUE OF STANDARD SILVER DOLLARS.

Standard silver dollars are furnished at the expense of the Mint in sums of $500 or any multiple thereof:

I. Upon the receipt at this office from any person of an original (duplicate will not do) certificate issued by any assistant treasurer or national bank depositary that a deposit of currency has been made to the credit of the Treasurer in general account. Deposits with the assistant treasurer in New York may be made by checks payable to his order, forwarded directly to him, with instructions to deposit the amounts on account of standard silver dollars, and to forward the certificates therefor to the Treasurer.

II. Upon the receipt at this office of United States notes, fractional currency, fractional silver coins, or national bank notes.

III. Upon the receipt and collection of a check on New York, payable to the order of the Treasurer of the United States.

VI. Issue and Redemption of Fractional Silver Coins.

ISSUE OF FRACTIONAL SILVER COINS.

1. The Treasurer and assistant treasurers of the United States will exchange fractional silver coins in sums of twenty dollars, or any multiple thereof, for lawful money of the United States, on demand of any holder thereof.

2. The Treasurer will forward fractional silver coins, at the
1608 expense of the Government, in return for remittances of fractional currency in sums of $500 or more.

3. The Treasurer will forward fractional silver coins at the expense of the consignee:

I. Upon the receipt at this office from any person of an original (duplicate will not do) certificate issued by any assistant treasurer or national bank depositary that a deposit of currency has been made to the credit of the Treasurer in general account. Deposits with the assistant treasurer in New York may be made by checks payable to his order, forwarded directly to him, with instructions to deposit the amounts on account of fractional silver coins, and to forward the certificates therefor to the Treasurer.

II. Upon the receipt at this office of United States notes or national bank notes.

III. Upon the receipt and collection of a check on New York, payable to the order of the Treasurer of the United States.

REDEMPTION OF FRACTIONAL SILVER COINS.

1. The holder of any of the silver coins of the United States of smaller denominations than one dollar may, on presentation of the same in sums of twenty dollars, or any multiple thereof, at the office of the Treasurer or any assistant treasurer of the United States, receive therefor lawful money of the United States.

2. The coins for exchange should be put up by denominations, and each package marked with the amount it contains.

3. No coins mutilated so as to be unfit for circulation will be received.

4. When the coins are forwarded to the Treasury by express they should, to avoid delay in payment, be addressed to the Treasurer U. S., Washington, D. C., as assistant treasurers, by reason of limited appropriations for clerical force in their respective offices, do not have facilities for handling large amounts, or for making returns.

VII. Issue and Redemption of Minor Coins.

ISSUE OF MINOR COINS.

1. The minor coins of the United States of the denominations of one cent, three cents, and five cents, are issued and forwarded free of expense, upon application to the Superintendent of the Mint at Philadelphia, for lawful money of the United States in sums of $20

or multiples thereof. Remittances may be made by postoffice money orders or sight-drafts to the order of said Superintendent, payable in New York or Philadelphia.

2. The Treasurer and assistant treasurers are authorized to pay out, for United States notes, any minor coins not needed in the current business of their offices.

REDEMPTION OF MINOR COINS.

1. Coins of copper, bronze, and copper-nickle may be presented
in sums of $20, or multiples thereof, assorted by denomina-
1609 tions and issues, at the Mint in Philadelphia, or to the Treas-
urer or any assistant treasurer, for redemption in lawful
money.

2. A letter of advice should accompany the package, stating the amount and kinds of coins, and the name of the owner

3. Mutilated minor coins will not be redeemed or exchanged.

VIII. Returns, How Made.

FOR REMITTANCES BY EXPRESS.

1. For United States notes, fractional currency, or national bank notes sent in any amounts, returns will be made in new United States notes or fractional silver coins.

2. For United States notes, fractional currency, fractional silver coins, or national bank notes sent in multiples of $500, standard silver dollars will be sent from the Mint.

3. For national bank notes sent from New York, Boston, or Philadelphia, returns will be made by the Treasurer's transfer check on the assistant treasurer U. S. in the city from which the remittance came.

4. For fractional silver coins sent in multiples of $20, returns will be made in new United States notes or by the Treasurer's transfer check on any assistant treasurer U. S.

5. For minor coins sent to the Mint, returns will be made either in minor coins by express or by the Treasurer's transfer check on any assistant treasurer U. S.; if sent to an Assistant Treasurer, returns will be made by transfer-check only; and if sent to the Treasurer, returns will be made either by transfer-check or in United States notes, or fractional coins by express.

6. For United States notes, fractional currency, or national bank notes, upon which the express charges have been prepaid at private rates, returns will be made, if so requested, by the Treasurer's transfer-check, drawn on any assistant treasurer U. S., payable to the order of the sender or of his correspondent.

7. Shipments as above indicated will be made only to points in the United States reached through established express lines by continuous railway or steamboat communication.

FOR REMITTANCES BY MAIL.

1. For United States notes or fractional currency, in amounts less than $5, new United States notes or fractional silver coins will be returned at the owner's risk, free of charge, by registered mail.

2. For United States notes or fractional currency, in amounts of $5 and over, returns will be made by the Treasurer's transfer-check on any assistant treasurer, or, if requested, in new United States notes or fractional silver coins, at the owner's risk, free of charge, by registered mail.

1610 X. EXPRESS CHARGES.

EXPRESS CHARGES PAID BY THE GOVERNMENT.

1. On remittances of public money between the offices of the Treasurer and of the assistant treasurers U. S.

2. On fractional currency sent to the Treasurer for redemption in sums of $500 or more, and on United States notes and fractional silver coins returned therefor.

3. On standard silver dollars sent from the Mint in multiples of $500, on orders from the Treasurer.

4. On minor coins issued by the Mint at Philadelphia, in multiples of $20.

5. On United States notes sent in multiples of $1,000, in return for national bank notes redeemed.

EXPRESS CHARGES NOT PAID BY THE GOVERNMENT.

1. On United States notes sent for redemption, the charges, if not prepaid, are deducted from the proceeds at contract rates.

2. On national bank notes sent for redemption, the charges, if not prepaid, are deducted from the proceeds at contract rates.

3. On fractional silver coins sent for redemption, the charges must be prepaid by the sender.

4. On minor coins sent for redemption to the Mint at Philadelphia, the Treasurer or any assistant treasurer, the charges must be prepaid by the sender.

5. On fractional currency sent for redemption in sums less than $500, the charges must be prepaid by the sender, and on returns therefor the charges at contract rates are deducted.

6. On United States notes returned in any other amounts than multiples of $1,000, for national bank notes redeemed, the charges are collected of the consignee.

7. On United States notes returned for United States notes, fractional silver coins, or minor coins redeemed, the charges at contract rates are deducted.

8. On United States notes returned for bankers' drafts on New York, the charges are collected of the consignee.

9. On fractional silver coins returned for certificates of deposit, checks, United States notes, or national bank notes, the charges are collected of the consignee.

10. On transfers of funds from national bank depositaries, the charges must be paid the banks.

THE GOVERNMENT CONTRACT WITH THE EXPRESS COMPANY.

1. The Government contract rates for the transportation of United States notes and fractional currency to the Treasurer for redemption, and of United States notes returned therefor, are 25 cents per $1,000, or fractional part thereof, for remittances from points within the territory of the Adams Express Company, and 60 cents per $1,000, or fractional part thereof, for remittances from points within
1611 the territory of any other express company, except from
points in the States of Arkansas and Texas, when the rate is 85 cents. When the remittance does not exceed $500, the rates are one-half of those above specified for $1,000.

2. The rate for the transportation of national bank notes to Washington for redemption, when the charges are deducted from the proceeds of the remittance, is 37½ cents per 1,000, or fractional part thereof, to each express company over whose lines the remittances pass, except from points in the States of Arkansas and Texas.

3. The contract extends to all points within the United States "accessible through established express lines reached by continuous railway communication," not lying westward of Omaha and Nebraska City, in Nebraska, and Atchison and Leavenworth, in Kansas, but does not embrace sea or river transportation of any kind.

It covers the lines of the following express companies: Adams, American, Central, Delaware, Lackawanna and Western, Eastern, National, New Jersey, Southern, Union, United States, and United States and Canada.

4. The Treasurer has no control over the rates exacted when the charges are prepaid, or when the remittances are from points without the limits of the Government contract.

5. No charge is made for the amount of express charges inclosed with a remittance of even thousands of dollars when the same is separately noted on the wrapper. Packages should always be marked with the exact amount of the contents.

X. General Information.

1. The act of June 30, 1876 (19 Statutes, 64), requires "that all United States officers charged with the receipt or disbursement of public moneys, and all officers of national banks, shall stamp or write in plain letters the word 'counterfeit,' 'altered,' or 'worthless,' upon all fraudulent notes issued in the form of, and intended to circulate as money, which shall be presented at their places of business; and if such officers shall wrongfully stamp and genuine note of the Uunited States, or of the national banks, they shall, upon presentation, redeem such notes at the face value thereof."

2. When the total amount of dues in any one payment to the Government cannot be paid entirely in lawful money of denomination of one dollar or greater, because involving a fractional part of a dollar, such fractional part may be paid in silver coins of denomina-

tions of less than one dollar, but when the total amount of such dues does not exceed ten dollars, such total amount may be paid in the silver coins of denominations of less than one dollar.

3. In case of the loss or destruction of one of his checks, and upon application for a duplicate, the Treasurer stops payment of the original check, and furnishes the applicant with a form of bond of indemnity, upon return of which, properly executed, a duplicate is issued.

1612 Compliance with the foregoing regulations is enjoined on all officers of the Department, and observance thereof will be expected of all making remittances to this office.

JAS. GILFILLAN,
Treasurer U. S.

Approved:
JOHN SHERMAN,
Secretary of the Treasury.

[7-483.]

DEPARTMENT OF THE INTERIOR, CENSUS OFFICE,
WASHINGTON, D. C., *June* 30, 1880.

To the New York and Philadelphia New Line, etc., Express Company, of 168 *Devonshire Street, Boston:*

In view of the fact that the express business is distinctively of American origin and development, and has attained immense dimensions here, and become interwoven inextricably with our entire commercial and industrial system, it is especially desirable that the tenth census, now being taken, shall contain as full and complete returns of the aggregate express business of the United States as it is possible to secure.

With this object in view, will you please fill up the inclosed blank for the twelve-month period ending as near to June 30, 1880, as may be practicable and convenient to you, and return the same in the inclosed envelope before the 1st day of October, 1880?

Should no detailed accounts have been kept of the business, or should it have been carried on in connection with other traffic, please to return as close an estimate as is practicable, with as full answers to the questions in the blank as can be given under the circumstances.

Respectfully, FRANCIS A. WALKER,
Superintendent of Census.

[7-410.]

DEPARTMENT OF THE INTERIOR, CENSUS OFFICE,
WASHINGTON, D. C., *August* 5, 1880.

Treasurer Adams Express Company, New York, N. Y.

SIR: The act of Congress approved March 3, 1879, makes it the duty of the Superintendent of Census to require and obtain certain information respecting the incorporated express companies of the

United States, on the 1st day of June, 1880. In compliance with the requirements of that act, a schedule of interrogatories has been prepared in this office, a copy of which is herewith inclosed.

For the purposes of compilation and tabulation it is considered absolutely necessary that the form prescribed for returns should be adhered to, in every particular, literally and strictly. If, owing to differences in methods of keeping accounts, the officers of any company should find it impossible to give the details of the information required, in exact accordance with the form of the schedule,
1613 careful estimates may be substituted for amounts and values taken from actual accounts kept. When estimates are given they should be so expressed in the schedule, and they should be based upon the best knowledge and belief of the returning officers.

Two envelopes addressed to the Superintendent of Census (upon which prepayment of postage is not required) are herewith inclosed. I will thank you to return to this office *at once* the appended form of receipt, properly filled, in the smaller envelope. In the larger please forward completed schedule within reasonable time after the close of your fiscal year.

Please accompany your return to this office with a printed copy (if you have it) of your annual report to stockholders.

Very respectfully, FRANCIS A. WALKER,
Superintendent of Census.

Office of the ——— Express Company.
(Post office address:) ———.

———, 1880.

The receipt of blank form is hereby acknowledged. The fiscal year of the company ends on the —— day of ——. A return will be made for the year ending ——, 18—.

(Name:) —— ——,
(Official position:) ———.

To the SUPERINTENDENT OF CENSUS, *Washington, D. C.*

Ruling of Judge Baxter.

Cross-question 54 seems to be altogether impertinent. But as it has been answered, a ruling in relation to it is rendered unnecessary at this time.

In the absence of the pleadings showing the issues made by the parties, I am not able to decide whether cross-questions 60, 63, 64, and 65 are material or otherwise. Let the witness answer. The complainant will be at liberty to move to suppress any part of the deposition after it shall have been returned, when the court, having the whole record before it and being aided by the argument of counsel, can make a more satisfactory decision of the question.

JNO. BAXTER, *Judge.*

Knoxville, Tennessee, August 28, 1880.

(Make out copy of list of shareholders as and upon which dividends were last paid, heading same "In answer to cross-question

63," and furnish same to examiner to be annexed to deposition; will answer for all.)

1614 In answer to cross-question No. 63, I. C. Babcock produced a list of shareholders of the Adams Express Company as they existed at the payment of the June, 1880, dividend, which is not printed.

NEW YORK, *August* 25, 1880, 11 A. M.

Present: Counsel as before.

The plaintiff puts in evidence the acts of the Legislature of the State of Kentucky incorporating the defendant, and gives notice that it will print, for the use of the court and counsel, only those sections having reference to the transportation of passengers and property, the charges to be made therefor, and the provisions of law requiring the publication of the tariff, and prohibiting excess of charges beyond tariff rates.

The defendant, at the request of plaintiff's counsel, admits that the exhibit set forth at large in paragraph 23 of the bill of complaint is correctly set forth, and was executed between the parties thereto.

The defendant also admits that about the date set forth in the 24th paragraph of the complaint the Louisville and Frankfort R. R. Co. and the Lexington and Frankfort R. R. Co. were consolidated under the name of the Louisville, Cincinnati and Lexington Railroad Company, and in that name succeeded to all the rights, powers, and privileges of the two old companies and became subject to their obligations; and that the consolidations has been frequently recognized by subsequent acts of the Legislature of the State of Kentucky.

The defendant also admits that the exhibit set forth in the 36th paragraph of the complaint is correctly set forth and was executed by the parties thereto.

The defendant also admits that the Louisville, Cincinnati and Lexington railroad was sold under a judgment of foreclosure of mortgage of the Louisville chancery court, in the case of George L. Douglas and others against the Louisville, Cincinnati and Lexington Railroad Company, and the purchasers at said sale, in the month of October, 1877, formed a new corporation, changing the name "railroad" to "railway" under an act of the Legislature of the
1615 State of Kentucky, approved March 1, 1876, entitled "An act to incorporate the purchasers of railroads," and the new company became possessed of all the powers, rights, and franchises, and subject to the obligations of the preceding railroad company and of the said two railroad companies which composed the consolidated company, as before admitted.

The defendant also admits that the exhibit fully set forth in paragraph 29 of the bill of complaint is correctly set forth, and was executed by the parties thereto.

The defendant also admits that the act to incorporate the Union Express Company is correctly set forth in the 32d paragraph of the complaint, as also the amendment thereto in the 35th paragraph. Counsel for the defendant states in connection with the admission that there may be other acts of the Legislature of Kentucky in regard to said Union Express Company, of which he is at present not informed.

The defendant also admits that the correspondence set forth in the 34th, 36th, and 37th paragraphs of the complaint was had between the parties thereto.

The plaintiff offers in evidence an act of Congress, approved June 10, 1880, and the Treasury Regulations issued thereunder, and gives notice that it will refer to the title of the said act in the words following: "An act to amend the statutes in relation to immediate transportation of dutiable goods and for other purposes," which act is in the words and figures following, to wit:

(Objected to by I. M. & South. R'y Co.)

Regulations.

TREASURY DEPARTMENT, *June* 21, 1880.

An act to amend the statutes in relation to immediate transportation of dutiable goods and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when any merchandise, other than explosive articles, and articles in bulk not provided for in section four [*five*] of this act, imported at the ports of New York, Philadelphia, Boston, Baltimore, Portland, and Bath, in Maine, Chicago, Port Huron, Detroit, New Orleans, Norfolk, Charleston, Savannah, Mobile, Galveston, Pensacola, Cleveland, Toledo, and San Francisco, shall appear by the invoice or bill of lading and manifest of the importing vessel to be consigned to and destined
1616 for either of the ports specified in the seventh section of this
act, the collector at the port of arrival shall allow the said merchandise to be shipped immediately after the entry prescribed in section two of this act has been made.

SECTION 2. That the collector at the port of first arrival shall retain in his office a permanent record of such merchandise so to be forwarded to the port of destination, and such record shall consist of a copy of the invoice and an entry whereon the duties shall be estimated as closely as possible on the merchandise so shipped, but no oaths shall be required on the said entry. Such merchandise shall not be subject to appraisement and liquidation of duties at the port of first arrival, but shall undergo such examination as the Secretary of the Treasury shall deem necessary to verify the invoice; and the same examination and appraisement thereof shall be required and had at the port of destination as would have been required at the port of first arrival if such merchandise had been entered for consumption or warehouse at such port.

SEC. 3. That such merchandise shall be delivered to and transported by common carriers, to be designated for this purpose by the Secretary of the Treasury, and to and by none others; and such carriers shall be responsible to the United States as common carriers for the safe delivery of such merchandise to the collector at the port of its destination; and before any such carriers shall be permitted to receive and transport any such merchandise, they shall become bound to the United States in bonds of such form and amount, and with such conditions, not inconsistent with law, and such security as the Secretary of the Treasury shall require.

SEC. 4. That sections 2853 and 2855 of the Revised Statutes of the United States be, and the same are hereby, so amended as to require that all invoices of merchandise imported from any foreign country, and intended to be transported without appraisement to any of the ports mentioned in the seventh section of this act, shall be made in quadruplicate, and that the consul, vice-consul, or commercial agent to whom the same shall be produced, shall certify each of said quadruplicates under his hand and official seal in the manner required by section 2855 of the Revised Statutes, and shall then deliver to the person producing the same, two of the quadruplicates, one to be used in making entry at the port of first arrival of the merchandise in the United States, and one to be used in making entry at the port of destination, file another in his office, there to be carefully preserved, and as soon as practicable transmit the remaining one to the collector or surveyor of the port of final destination of the merchandise: Provided, however, That no additional fee shall be collected on account of any service performed under the requirements of this section.

SEC. 5. That merchandise transported under the provisions of this section shall be conveyed in cars, vessels, or vehicles securely fastened with locks or seals, under the exclusive control of the officers of the customs; and merchandise may also be transported under the provisions of this act by express companies on passenger trains, in safes and trunks, which shall be of such size, character, and description, and secured in such manner as shall be from time
1617 to time prescribed by the Secretary, and in cases where merchandise shall be imported in boxes or packages too large to be included within the safes or trunks so prescribed, such merchandise may be transported under the provisions of this act by such express companies in a separate compartment of the car, secured in such manner as shall from time to time be prescribed by the Secretary of the Treasury; and merchandise, such as pig-iron, spiegel-iron, scrap-iron, iron ore, railroad iron, and similar articles commonly transported upon platform or flat cars, may be transported under the provisions of this act upon such platform or flat cars, and the weight of such merchandise so transported shall be ascertained in all cases before shipment, and ordinary railroad scales may be used for such purpose; and inspectors shall be stationed at proper points along the designated routes, or upon any car, vessel, vehicle, or train, at the discretion of the Secretary of the Treasury, and at the expense of the companies, respectively. Such merchandise shall not be unladen or trans-shipped between the ports of first arrival and final destination unless authorized by the regulations of the Secretary of the Treasury in cases which may arise from a difference in the gauge of railroads, or from accidents, or from legal intervention, or when by reason of the length of the route the cars,

after due inspection by customs officers, shall be considered unsafe or unsuitable to proceed further, or from low water, ice, or other unavoidable obstruction to navigation; and in no case shall there be permitted any breaking of the original packages of such merchandise.

SEC. 6. That merchandise so destined for immediate transportation shall be transferred, under proper supervision, directly from the importing vessel to the car, vessel, or vehicle in which the same is to be transported to its final destination.

SEC. 7. That the privilege of immediate transportation shall extend to the ports of New York and Buffalo in New York; Burlington in Vermont; Boston in Massachusetts; Providence and Newport in Rhode Island; New Haven, Hartford, and Middletown in Connecticut; Philadelphia and Pittsburg in Pennsylvania; Baltimore, Crisfield, and Annapolis in Maryland; Wilmington and Seaford in Delaware; Georgetown in the District of Columbia; Salem in Massachusetts; Norfolk, Petersburg, and Richmond in Virginia; Wilmington and Newbern in North Carolina; Charleston and Port Royal in South Carolina; Savannah and Brunswick in Georgia; New Orleans in Louisiana; Portland and Bath in Maine; Portsmouth in New Hampshire; Chicago, Quincy, Cairo, and Alton in Illinois; Detroit, Port Huron, and Grand Haven in Michigan; St. Louis, Kansas City, and St. Joseph in Missouri; St. Paul in Minnesota; Cincinnati, Cleveland, and Toledo in Ohio; Milwaukee and Lacrosse in Wisconsin; Louisville in Kentucky; San Francisco, San Diego, and Wilmington in California; Portland in Oregon; Memphis, Nashville, and Knoxville in Tennessee; Mobile in Alabama; Evansville in Indiana; and Galveston, Houston, Corpus Christi, Indianola, and Brownsville, in Texas; Omaho in
1618 Nebraska; Dubuque, Burlington, and Keokuk in Iowa;
Leavenworth in Kansas; Tampa Bay, Fernandina, Jacksonville, Cedar Keys, Key West, and Apalachicola in Florida: *Provided*, That the privilege of transportation herein conferred shall not extend to any place at which there are not the necessary officers for the appraisement of merchandise and the collection of duties.

SEC. 8. That sections two thousand nine hundred and ninety, two thousand nine hundred and ninety-one, two thousand nine hundred and ninety-two, two thousand nine hundred and ninety-three, two thousand nine hundred and ninety-four, two thousand nine hundred and ninety-five, two thousand nine hundred and ninety-six, and two thousand nine hundred and ninety-seven of the Revised Statutes be, and the same are hereby, repealed.

SEC. 9. That no merchandise shall be shipped under the provisions of this act after such merchandise shall have been landed ten days from the importing vessel, and merchandise not entered within such time shall be sent to a bonded warehouse by the collector as unclaimed, and held until regularly entered and appraised.

SEC. 10. That section two thousand nine hundred and eighty-one of the Revised Statutes be amended so as to read as follows: That whenever the proper officer of the customs shall be duly notified in writing of the existence of a lien for freight upon imported goods, wares, or merchandise in his custody, he shall, before delivering such goods, wares, or merchandise to the importer or consignee thereof, give seasonable notice to the party or parties claiming the lien, and the possession of the officers of customs shall not affect the discharge of such lien, under such regulations as the Secretary of the Treasury may prescribe; and such officer may refuse the delivery of such merchandise from any public or bonded warehouse or other place in which the same shall be deposited, until proof to his satisfaction shall be produced that the freight thereon has been paid or secured; but the rights of the United States shall not be prejudiced thereby, nor shall the United States or its officers be in any manner liable for losses consequent upon such refusal to deliver. If merchandise so subject to a lien, regarding which notice has been filed, shall be forfeited to the United States and sold, the freight due thereon shall be paid from the proceeds of such sale in the same manner as other charges and expenses authorized by law to be paid therefrom are paid.

SEC. 11. That this act shall take effect and be in force from and after the first day of July, anno Domini eighteen hundred and eighty. (Act approved June 10, 1880.)

And also so much of the Treasury regulations in relation to said act as is in the words following:

"Common carriers who desire to transport goods under the above act must apply for authority to the Secretary of the Treasury. 1619 * * * If the application is granted, bond form 1 will be executed in duplicate by the applicants. * * * The penalty of each bond for transportation from the port of New York shall be $500,000, and from other ports $250,000."

[Form No. 1.]

Bond for Immediate Transportation of Dutiable Merchandise.

Know all men by these presents, that we, —— and ——, as sureties, are held and firmly bound unto the United States of America in the sum of —— dollars, to be paid to the United States; for which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents. Witness our hands and seals this —— day of ——, eighteen hundred and ——.

Whereas the above-bounden —— ha— been designated as — common carrier- for the transportation of unappraised dutiable merchandise, under the act of June 10, 1880, and the rules and regulations prescribed by the Secretary of the Treasury in pursuance thereof, from the port of —— to the port- of ——, in the following manner, viz:

Now, therefore, the condition of this obligation is such that if the above bounden principal- shall duly observe and faithfully comply with the laws of the United States, and regulations of the Treasury Department made in pursuance thereof, pertaining to the transportation and safe delivery of imported merchandise under the provisions

of the act of Congress entitled "An act to amend the statutes in relation to immediate transportation of dutiable goods, and for other purposes," approved June 10, 1880, and of all acts relating thereto, and shall pay the necessary expense of such locks, seals, and other fastenings as may be prescribed and required by the Secretary of the Treasury for securing the custody and safe transportation of such merchandise in such cars, vessels, vehicles, safes, or trunks as may be authorized and used by them for that purpose; and shall also pay the expense of such inspectors as the Secretary of the Treasury, at his discretion, may cause to be stationed at points along the designated routes, or upon any car, vessel, vehicle, or train (such expense to include the salary as well as the actual necessary traveling expenses of such inspectors), in such manner as may be directed by the Secretary of the Treasury; and shall use only such means of conveyance for transportation as may be authorized by the Secretary of the Treasury; and shall, without delay, transport and make prompt report and safe delivery of all merchandise as described in each and every entry, and in each receipt therefor executed by said principal- or —— duly authorized agents, delivered to said principal for transportation under the provisions of said act, to the collector or other proper officer of the customs at the port of destination, in the manner required by law and regulations aforesaid; or in default of such delivery shall pay to the United States as liquidated damages the value of all such merchandise not so transported and
1620 delivered at invoice value, or at a greater value, if such be shown, with the duties added, together with all costs, charges, and expenses caused by the failure to make such delivery; and shall also protect and save harmless the United States from any loss or damage resulting from fraud or negligence on the part of any officer, agent, or other person employed by the above-bounden principal, then this obligation to be null and void; otherwise to remain in full force and virtue.

Signed, sealed, and delivered in presence of—

"For the transportation of unappraised merchandise by common carriers, only entire cars can be used, except by express companies, when carrying such merchandise on passenger trains, and except that such merchandise may be placed in compartments of cars to be transported by express companies on passenger trains, when the packages are too large to be placed in the safes or trunks. The compartments must be separated from the remainder of the car by a strong partition; and the cars, vessels, vehicles, compartments, safes, and trunks must be so constructed that the inclosed space in which the merchandise is carried can be securely fastened and locked with customs locks in such manner that access cannot be had to the merchandise without removing the locks.

Safes and trunks used for transportation by express companies on passenger trains must be of iron, or of wood bound with iron, and shall contain only goods shipped for immediate transportation."

And also puts in evidence section 2998 of the Revised Statutes, in words and figures following:

"SEC. 2998. Any person maliciously opening, breaking, or entering, by any means whatever, any car, vessel, vehicle, warehouse, or package containing any such merchandise so delivered for transportation, or removing, injuring, breaking, or defacing any lock or seal placed upon such car, vessel, vehicle, warehouse, or package, or aiding, abetting, or encouraging any other person or persons so to remove, break, injure, or deface such locks or seals, or to open, break, or enter such car, vessel, or vehicle, with intent to remove or cause to be removed unlawfully any merchandise therein, or in any manner to injure or defraud the United States; and any person receiving any merchandise unlawfully removed from any such car, vessel, or vehicle, knowing it to have been so unlawfully removed, shall be guilty of felony, and, in addition to any penalties heretofore prescribed, shall be punishable by imprisonment for not less than six months nor more than two years."

1621 Plaintiff also proves a contract between the Adams Express Company and the Connecticut Valley Railroad Company, dated August 8, 1871, and still in force, granting to the express company all the requisite facilities for the transportation of express matter by any and all passenger trains, free passages for messengers and officers, express matter to be carried in baggage cars for compensation to the railroad company, 40 per cent. of receipts.

(The defendant objects to this mode of proof as to the contents of the contracts between the plaintiff and other railroad companies, and will only waive the objection upon the understanding that all the contracts now and heretofore alluded to shall be produced at the trial for the inspection of court and counsel, and then being offered in evidence in full if desired. The counsel for the plaintiff has produced all the contracts already testified to, and will produce the others so fast as they are referred to. He abbreviates the contents to save the expense of printing the contracts as a whole, and agrees to produce the original contracts at the hearing. The majority of such contracts being terminable at the option of either party, generally upon specific notice to that effect.)

Also, a contract, dated May 26, 1871, and yet in force between the New York, Providence and Boston R. R. for the term of five years with the Adams Express Company, to furnish all the requisite facilities for the express business and messengers and baggage cars for its local passenger trains for 40 per cent. of gross receipts derived from the transportation of all express matter carried on said trains, with the exception of the receipts derived from the carriage of money, bullion, securities, valuable papers, and jewelry. The receipts from which latter business shall be retained by the express company, which is to indemnify and save harmless the railroad company from all loss arising from the transaction of this class of business, unless the same shall be caused by the negligence or carelessness of the railroad company, and guaranteeing that such 40 per cent. shall amount to $7,500 per annum. The express facilities are to be so furnished exclusively for the term of the contract to the Adams Express Company.

1622 The previous contract of the Connecticut Valley Railroad Company with the Adams Express Company uses this language: "That the said party of the first part, for and in consideration of the stipulations hereinafter contained, hereby agrees with and engages said party of the second part to act as their sole agents in managing, controlling, conducting, and transacting all of its express business which may be offered to or controlled by either party hereto over the Connecticut Valley railroad during the continuance of this contract."

Adjourned to August 26, 1880, at 10 a. m.

NEW YORK, *August* 26, 1880—10 a. m.

Present: Counsel as before.

JAMES C. FARGO, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by Mr. SEWARD, counsel for complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. James C. Fargo; I am 51 years old; I reside at the city of New York; I am in the express business.

Q. 2. Are you connected with any—and, if so, what—express company; in what capacity, and for how long?

A. I am connected with the American Express Company since its organization in 1851, and am a director in the National Express Company and Delaware, Lackawanna and Western Express Company; I am general superintendent of the American Express Company.

Q. 3. During this period have these companies since their organization been in the enjoyment upon the railway lines over which they ran of what are termed express facilities?

A. They have.

Q. 4. Please state what facilities have been actually afforded by the railroads to the express companies.

A. Every facility that was necessary for the quick trans-
1623 portation and proper handling of the business, such as the furnishing of exclusive cars and trains in some instances, and running them at times required by the business to be sent, and the handling of the cars and trains at the stations, placing them where it was convenient to load and unload the business, and affording the companies conveniences at the stations and depots for agencies in the handling of freights; allowing our agents and messengers to occupy these cars while on the roads and in common with the bag-

gagemen, where we occupied portions of the baggage car; all necessary time for loading and unloading our business at the stations while the trains were stopping, and a great many other accommodations and little facilities necessary to the business that I can't name now.

Q. 5. Is there any prominent line of railway in the United States on which the substance of these facilities is not afforded to some form of express organization?

A. Not to my knowledge.

Q. 6. You have spoken of express messengers. Please state in detail what are the precise duties of that class of employés, and upon what portion of the railway train such messengers have been habitually accorded the privilege of riding.

A. It is the duty of messengers, before leaving, to go over their respective routes, to take the way-bills of all matter that they are to carry out, and to compare the same in marks and numbers with the articles themselves, and to see that all are safely taken from the office from which they start to the depots and loaded on the cars—express or baggage—or portion of the cars set apart by the railroads for the convenience of our business, in which they ride and transact their business on the routes. After leaving the terminal station, and before arriving at the first stopping place, it is their duty to again compare their way-bills with the articles to be left at the stopping place, and so on at each and every stop the train makes till its final destination. They also receive way-bills and articles entered thereon from the agents or other representatives of the company at the different stopping points on their routes. In the
1624 baggage and express cars, where the property of the company
has been carried, is the place where they have the privilege of riding.

Q. 7. Please give the names of such other express companies than those you have mentioned, which now occur to you, as being engaged in the express business.

A. Commencing in the East, the Inter-Colonial, in the Eastern Dominion of Canada, from Quebec east; the Eastern Express Company, the United States and Canada Express Company, the Canadian Express Company, United States Express Company, the New York and Boston Express and Dispatch Company, the Southern Express Company, Wells, Fargo & Co.'s Express, the Texas Express Company. Those are the principal companies I now think of. Of course, there are hundreds of others, which I cannot now name, which extend their business over every mile of railroad and steamboat travel in the United States.

[Q. 8.] Is there a publication printed in Boston called the A, B, C, Pathfinder Express List, of which you can produce a copy?

A. There is. I have a copy here. The issue of June, July, and August, 1880.

Q. 9. Does the conduct of the express business, as that term is generally applied, include anything more than the transportation on a railway car of goods, wares, and merchandise going from one railway station to another?

A. It does. I consider the mere carrying of the property from one town to another a very small proportion of the facilities and conveniences extended by the express business to the public.

Q. 10. Will you please illustrate by particular details the various services rendered by an express company in the ordinary conduct of its business, beyond and exclusive of the transportation on a railway car of goods, wares, and merchandise from one station to another?

A. Under ordinary circumstances and at all the larger cities and towns it is the practice of the express companies to furnish men, horses, and wagons for the purpose of calling at the residences or places of business of shippers, and receiving whatever property they may have occasion to forward at all hours of
1625 the day, night, and Sundays, if requested. At all transfer
points this property is loaded and unloaded, receipted and delivered, losses or damages paid by the express companies. It is the custom of the different companies to make purchases of any or all property and to make sales of consignments of property. It is also a custom of the express companies to make telegraphic transfers of money of all amounts, as, for instance, a circumstance which occurred the other day, and which occurs almost every day, if not hourly, at different parts of the line, of a mother coming into our office here and asking us to pay, in St. Louis, $25 to her son who was sick in the hospital. The manner of doing this is by dispatch from this office to our agent at St. Louis, instructing him to pay over the amount to the party named, and use his voucher for the amount in the payment of his balances to this office. In making telegraphic transfers of this character between other points on the line it is customary for the office instructing the payment to forward the amount by the first messenger to the office making the payment. This class of business is not confined to any particular people or business. It is used frequently by business men, merchants, and bankers, as well as by anxious mothers.

Q. 11. Do your companies transact what is known as the C. O. D. business; and if so, please explain what such business is, and illustrate how it is conducted?

A. We do. As an illustration, Messrs. A. T. Stewart & Co. would receive an order from a party in Winnepeg, in the British Possessions of the North, whom they did not know, and would never see or know whether he was black or white, requesting them to forward certain articles of dry goods to the value of, say, $100. These goods are invoiced and packed and delivered to our wagons which call at Stewart's, with instructions that we take the property and invoice, carry it as marked, and collect the amount of the invoice from the consignee before or at the time of its delivery to him or her, as the case may be, and in case of the refusal of the consignee, or failure to collect the invoice, we are to hold the property subject to their order, or, in some instances, to return it at once to them, they look-
1626 ing to the express company for the amount of invoice, or re-
turn of property, knowing or caring nothing as to the responsibility of the consignee.

Q. 12. Do the express companies ever render this C. O. D. service when the actual custody of the shipment is not confided to the express company, but the goods are forwarded by independent means?

A. They do; and it has become quite an important item of revenue to the company by affording such facilities to the shippers.

Q. 13. Can you illustrate such a case, briefly?

A. The shipment of coarse property and of not much value, such as machinery, or other heavy articles that won't bear passenger train transportation, as, for instance, a car-load of farm wagons shipped to the prairies in the West by some manufacturing company East, not knowing as to the responsibility of the party giving the order, consign the shipment to the company's agent, and deliver to the express company the railroad or other transportation company's receipt for the shipment attached to the invoice to be forwarded and invoice collected on delivery of the receipt or bill of lading to the party for whom the property is intended.

Q. 14. Do the express companies render any services for the public in the matter of negotiable paper; and if so, please illustrate the fact.

A. Yes; it is one of the chief departments of the business. The collecting of drafts, notes, and accounts, protesting of same for non-payment when required, and placing them in the hands of reliable attorneys when suits on the same become necessary. In the transaction of this branch of our business it often occurs and becomes necessary by the instructions of the forwarder and owner of the paper that the demand should be made at interior points off the lines of railroad, and not reached directly by express, in which case the company furnish special messengers from their nearest office.

Q. 15. Does the express business extend to the transportation of live stock of any kind?

A. It does. It is customary for the companies to receive any animal below the size of an elephant—animals of all kinds, fish
1627 and fowls. Generally, the class of animals that are forwarded
by express are generally those that are held at large values, requiring special care in handling while en route, which the express companies are enabled to extend through their messengers and employés having direct charge of the shipment. Dead fish we receive where the shipper requires it, and in the case of live fish change the water from time to time.

Q. 16. In a general way, what proportion of the express business is confined to the simple transportation of goods, wares, and merchandise on railway cars from one station to another?

A. I don't understand the question.

Q. 17. In a general way, what proportion of the revenues of the express business arise, solely and exclusively, from the transportation of what is known as goods, wares, and merchandise on a railway car from one station to another?

A. I should judge about 40 per cent.

Q. 18. Over or through how many States does the American run?

A. We run from St. Johns, New Brunswick, in the East, Montreal in the North, to Winnipeg in the British possessions in the Northwest, Fort Kearney, Nebraska, and St. Louis and Cairo in the Southwest; that is the extreme limit, I think, occupying for our business principally the lines of railroad lying north of the Boston & Albany, New York Central, Lake Shore & Michigan Southern, the C., C., C. & I. north of the Ohio river.

Q. 19. Do you run from Boston to St. Louis?

A. We do.

Q. 20. Suppose a shipment of law books by Little & Brown, of Boston, by your express to a lawyer in St. Louis, through what States and over what railways would such shipment pass?

A. Massachusetts, New York, Western Pennsylvania, Ohio, Indiana, and Illinois, and over the lines of railroads just named, adding the Indianapolis and St. Louis or Vandalia lines.

Q. 21. Would Little & Brown receive a voucher from your express for such shipment?

A. They would receive our usual receipt.

1628 Q. 22. Would that cover the entire transportation between Boston and St. Louis?

A. It would, including that through the streets of Boston and St. Louis, in receiving the property and delivering it.

Q. 23. Does your company usually issue similar receipts in all cases?

A. They do for the same class of business. We have one form for merchandise, one for money, one for collections, and a special receipt for the live stock.

Q. 24. Do all such receipts cover the entire route from shipment to destination on your line?

A. They do while in our charge.

Q. 25. Do the express companies have anything to do—and, if so, what—with regard to the movement of the currency or money of the country?

A. Yes, sir; as a rule all the currency transported by bankers, and largely by merchants, is made through the express companies.

Q. 26. Aside from the rendition of the various classes of services which you have thus specified as being rendered for the public, have the express companies any other business, or is there any other purpose in their organization?

A. Yes, they have other business; there is no class or character of a commission that can be required by the public, legitimate, of course, which the companies won't undertake to carry out on application.

Q. 27. As a general thing, in the execution of such commissions, are not the railway facilities to which you have alluded made use of, and are they not necessary therefor?

A. They are.

Q. 28. As a general proposition, are not such commissions in some way connected with the commerce or industries of the country?

A. I should say they were.

Q. 29. In a general way, can you state what proportion of the American Express business involves the rendition of service and the transportation of property of some kind between two or more States?

A. I should say at least eighty per cent. of it.

1629 Q. 29*. I am advised of the general and perhaps proper reluctance of those having the custody of the business of others confided to their care to make any statements as a witness in relation thereto; but if I can, without improperly prying into the affairs of your companies, I would like to have you state, so far as you can do so, the number of miles of railway covered by the American, the National, and the Delaware, Lackawana & Western Express Companies, the number of express stations, the number of employés, and the basis on which said companies settle with the railway companies for express facilities. An approximate answer will be sufficient.

A. I am not able to answer either of these questions in connection with either the National or Delaware, Lackawana & Western Express Companies, except as to their manner of payment for services rendered by the railroad companies, which are made on the same basis as the other companies make them to railroad companies—so much per 100 pounds or percentage of earnings. The American Express Company's contracts, as they exist to-day, include about 200 different railway organizations, covering about 28,000 miles of lines, and we have under salary nearly, if not quite, 7,000 men. We have agencies in the different towns, cities, and villages, 4,000. Our messengers travel 120,000 miles every twenty-four hours. Our cost for transportation runs from three to ten cents a ton a mile; the contracts are far less, some of them; they vary according to the distance the property has to be transported, and the quantity and class of property to be carried, the lower rates being made to cover through business foreign to the line, and the higher rates to the short hauls and local and non-competing business of the line. Our contracts with the roads are for payments for actual weights carried in some instances, in others for a certain capacity in cars, and in others we guarantee a certain amount of tonnage. In all our contracts with the roads to-day I don't remember a half a dozen where the payment of fare to the railroad companies is exacted. It is customary under our contracts, and generally stated when contracts are put in writing, that the messengers and all other representa-
1630 tives of the company traveling on business of the company are to be carried free by the railroads. As a rule, we give preference to married men as employés.

Q. 30. In cases where messengers' fare is paid, is it at full first-class passenger rates?

A. Never; half price.

Q. 31. Are there understandings with regard to railway facilities, in some cases which are made orally, and not reduced to a formal written contract?

A. Frequently.

Q. 32. Have you any objection to state the average percentage paid by your company for railway facilities?

A. I don't know as I would be at liberty to give any information as to the earnings or expenses of our company without consultation with the executive committee.

Q. 33. Would the same considerations render you reluctant to state, as a fact, whether such percentages, on the general average, are above or below 40 per cent. of the express earnings on the roads on which you have a percentage arrangement?

A. I should say they would not vary 5 per cent. either way from that figure.

Q. 34. Are you willing to state whether you have any percentage contracts which give to the railroads more than 50 per cent. of the express receipts?

A. We have none.

Q. 35. Will you please state with some particularity of detail, for the information of the court, all the circumstances which, from the express standpoint of view, are proper to be taken into consideration in determining what compensation it would be just and reasonable for an express company to pay for such railway facilities as you have before specified?

A. It depends considerably upon the competition that the express company is to meet with from other express, railroad, or steamboat companies; also the size of the towns and villages, the population located on the lines, the importance of the line as a connecting link in a main trunk line, and generally the character and quantity of business the express company will be likely to secure by occupying the line.

1631 Q. 36. As a whole, has the express business since its organization been successful?

A. It has, so far as I am advised.

Q. 37. To what do you attribute such success?

A. To many things; principally the confidence of the public in the old-established express companies, earned in the past quarter of a century, and more by the satisfactory manner in which they have transacted their business, and particularly the prompt payment of any losses that have occurred from time to time.

Q. 38. Are there any features of the conduct of the express business in its inter-State aspect, to which you have referred, to which this success and confidence are, in your opinion, attributable, and which are not common to railway transportation in a single State of goods, wares, and merchandise?

A. I should say that, with the exception of the merely rail transportation of the business, the entire express business was different from that offered by the railways to the public. In the first place, we give shippers through receipts from the point of shipment to the destination, when it is reached directly by our company, where railroad companies would only receipt for their own individual line; we call at the place of residence or business of the shipper, at any and all hours required by the shipper, giving them our receipt for the property on the spot, while in shipments made by railroad the shipper is required to deliver his property, at his own risk and cost, to the depots of the railway companies, frequently miles distant from his place of business or residence, and can only make such de-

liveries at certain hours of the day. Still another advantage furnished by the express companies to the public is the extra care with which the property is handled, the furnishing of iron safes for money and valuables, and the accompanying of all shipments by special messengers from the moment the property comes into the possession of the express companies until it is delivered to consignee; none of which facilities are offered or furnished by railway companies. There is another item of importance not coming within the facilities
1632 offered by railway companies; that is, the care of property coming into the United States from foreign lands, leaving the United States for foreign countries, and passing through the United States to and from foreign countries. Under the revenue laws of the United States this service requires personal bonds for large amounts to the Government. Within the past thirty days individual members of the American Express Company, for the company, have entered into bond with the United States Government, in the penal sum of $1,000,000, for the prompt and safe transmission of foreign property or goods shipped from foreign countries, passing through the port of New York, to all inland ports of entry established under the immediate transportation act, June 20, 1880. Under this system the company are enabled to offer the public the same facilities between Europe and the cities of America as are offered between any two cities in America, and with the same safety to the revenues of the country.

Q. 39. Can you state generally the amount of money transported by the American during its last fiscal year?

A. I cannot, but by actual statistics for two months, May and June last, it is estimated that the company are handling from 12,000,000 to 15,000,000, different shipments, annually.

Q. 40. Do you know an organization called the Merchants' Despatch?

A. I do; the title of which is the Merchants' Despatch Transportation Company.

Q. 41. You are connected therewith?

A. I am; I am the president of the organization.

Q. 42. What is its business?

A. It is for the transportation of what is termed fast freight—property that will not bear the cost of transportation by express, and requires quicker transportation than by ordinary freight trains.

Q. 43. What arrangements exist between the railway companies and such despatch company as to the terms of such transportation?

A. The despatch company furnish their own cars, for which
1633 the railway companies allow them a mileage when run over their lines. They also pay the despatch for securing the business a commission on the gross earnings, varying from two to fifteen per cent., according to the class of business.

Q. 44. Please state an illustration of the kind of property as to which the commission would be fifteen per cent., and which is yet of that character as not to justify express transportation, and then precisely what the despatch company would do to such particular shipment.

A. That fifteen per cent. would cover all property enumerated under the head of first class in railroad classification. It would apply to a shipment of a stock of dry goods in such large quantity as wouldn't warrant the shipment of the same by express. The despatch company's agent, by inducements offered to the owner or shipper of the property, by way of prompt transportation, the settlements of overcharges, losses, or damages which, through their agents, located throughout the country, are able to make with consignee. In that manner the business is secured, and the despatch company, on presentation of the railroad company's receipt showing the delivery of the property at the station, issue to the shipper their through bill of lading.

Q. 45. In case of absolute loss or damage on the route, who pays the shipper?

A. The settlements are made with the owner by the representatives of the despatch company; and if a loss which the railroad company have agreed to assume, or are legally liable for, the amount is refunded to the despatch company by the railroad company; otherwise it comes out of the moneys of the despatch company.

Q. 46. In case of loss by fire, collision, theft on route, or rising from ordinary railroad accidents, who pays the shippers?

A. If it is a loss taken by the carrier, the Merchants' Despatch will pay it. All losses for which a common carrier will be liable under the laws of the country would be paid by them and refunded by the railroad company, as stated.

Q. 47. About how much slower than a passenger train carrying the local express does the despatch train run?

A. I should say the despatch trains made twenty miles an
1634 hour, and the local passenger trains about thirty to thirty-five miles an hour.

Q. 48. Can you state what advance over ordinary freight rates by freight trains is charged to the shipper for the greater swiftness of the despatch trains?

A. No distinction is made by the railroads; the same freight on both.

Q. 49. Do you know the constitution of what are called the fast freight lines or color lines running from the city of New York? And, if so, please state how and by whom the same are constituted, and whether any of the railroad companies, parties thereto, severally issue, outside of such combination, through bills of lading for property going beyond their own lines of railway?

A. So far as my knowledge goes, with the exception of the Merchants' Despatch, all other fast freight and color line organizations or combinations are made up on what is termed the co-operative plan; that is, each and every railroad company over whose lines the organization is to work is allowed, if they desire, to place in the service such number of cars as the number of miles of their road bears to the total number of miles intended to be covered by the organization. The joint roads then agree upon an appointment of a general manager for the business of the through line. All property handled by such line is receipted for and bills of lading issued in whatever name they give to their organization—as, for instance, the Star, Union, and Empire lines on the Pennsylvania road; Erie and North Shore line on the Erie roads; and the Red, White, and Blue lines on the New York Central. Through bills of lading are never issued in the name of the individual roads forming this combination. The usual speed of these fast freight lines is about twenty miles an hour, and the charge of freight thereon is the same as ordinary freight lines.

Adjourned to August 27, 1880, at 10 a. m.

1635 NEW YORK, *August* 27, 1880.

Cross-examination of the witness, JAMES C. FARGO, by Mr. BARNETT:

Cross-Q. 50. Please to give the names of the principal express companies in the United States in a general way, the field of operation of each, say which are corporations and which voluntary associations.

A. The Intercolonial Express, which operates the lines from Quebec and other points in the Eastern Dominion of Canada; I don't know whether it is a corporation or otherwise,

The Canadian Express Company, covering generally the line of Grand Trunk railroad of Canada; I know nothing about their organization as to whether it is incorporated or otherwise.

The Eastern, United States and Canada Express Companies are owned by the American Express Company, and occupy the territory in the New England States north of the Boston and Albany road, extending north as far as the St.Lawrence river and Montreal. They are joint stock associations, and come under the American organization.

The Adams Express Company, running from Boston, in the southern New England States south of Boston, to New York, Philadelphia, Washington, and the Southwestern States. That I understand to be a joint stock association or copartnership.

The American Express Company, extending under the organization of the Eastern Express Company from St. John, New Brunswick, and by the United States and Canada express organizatien from the Northern New England States to the Western, Northwestern, and Southwestern States. It is a joint stock company or copartnership.

The United States Express Company, running from New York over the line of the Erie railway to the Western, Northwestern, and Southwestern States. This is a joint stock company.

1636 Wells, Fargo & Co.'s Express, covering all lines of railroad on the Pacific coast, running eastward as far as Ogden. This is a corporation under the laws of Colorado, I believe.

The Southern Express Company, running from New York to the Southwestern States. I don't know as to their organization.

The Texas Express Company, from New Orleans, the Southwest, and West. I am not advised as to their organization.

Then there are all those express companies that are mentioned in the Boston A B C Guide. I believe I have mentioned the principal companies.

Cross-Q. 51. Are these companies, or any of them, required by law to make report to any legal authority as to their assets and earnings, gross or net? If so, which, and to what legal authority?

A. I don't know of any, or either of them, that are required to make any such reports, except within the State of Indiana; that State, I think, requires each company doing business within the State to file in each county a statement agreeing that the service of papers upon agents of the company at any point shall be accepted as a service upon the company, and also requiring the amount of actual capital required in the business of that State.

Cross-Q. 52. Do express companies, in transporting over the lines of railway companies, ship their property, or that intrusted to them by others, like ordinary shippers, or is it always done under some special arrangement?

A. Well, we consider ourselves ordinary shippers in some respects. The property in our charge is handled differently from the regular shipments by railroad. Our own men load and unload it, as a rule, at passenger stations and on passenger trains. We contract with the railway companies for our business; I don't know whether it could be called special or not; I think not. We don't understand that the railroad companies are prevented from making similar contracts with other parties.

Cross-Q. 53. Do shippers generally, excluding express companies,
when sending goods, wares, or merchandise by railways, and
1637 not in charge of any express, make written contracts extending
for a term of years, contracting for space, and that their goods
shall go by passenger trains? Are or not such contracts made by
express companies alone?

A. That is a question I am not able to answer. I have no means of knowing what the public generally do with reference to their transportation.

Cross-Q. 54. Do shippers other than express companies, so far as you know, claim the right to send their property with safes and messengers upon any railroad trains, independent of any special contract to that effect?

A. I have no means of knowing what demands shippers may make of railroad companies.

Cross-Q. 55. Do shippers make the claims indicated in the previous question of the Merchants' Dispatch Company, of which you are president?

A. They do not.

Cros-Q. 56. Has such claim ever been made by any shipper on that line, to your knowledge?

A. No, sir.

Cross-Q. 57. Does the American Express Company operate any line of railway or steamboats, except under a contract in writing, or some precise verbal contract, specifying the accommodations to be furnished and the prices to be paid therefor, as well as the duration of the contract and the conditions upon which it may be terminated?

A. We occupy a great many lines by an understanding between the two parties as to the rates we are to pay for the facilities furnished for our business, but without any agreement as to how or when the arrangement is to terminate.

Cross-Q. 58. Does the American Express Company have written contracts with a majority of the railroad companies whose lines it operates, or what is the proportion of the cases in which there are written contracts to the cases in which there are no written contracts.

A. Well, I should suppose about one in ten require contracts drawn up in due form.

Cross-Q. 59. My question does not allude to contracts drawn in due form, but to cases, and all cases, in which there exists a memorandum in writing.

1638 A. Well, I should suppose that half were verbal understandings, and the remainder between that and the ten per cent. spoken of were made by correspondence, as to the rates and facilities to be furnished, the accommodations and conveniences generally to be afforded by the railroad companies being so well understood by both parties that it is not deemed necessary to go into the detail of such matters.

Cross-Q. 60. Does the American Express Company claim and exercise the right to abandon its operations upon the line of railway or steamboats whenever it deems it its pecuniary interest to do so, or when it chooses so to do?

A. It would, except that they are under contract preventing. At the same time we should not withdraw or abandon a line until after exhausting every resource to remedy the existing difficulty.

Cross-Q. 61. Does the American Express Company concede to the railroad companies and steamboat companies, under the circumstances referred to in the preceding question and answer, like right to terminate the contract or arragement by which such companies had granted facilities to the express company?

A. If the contracts between the companies permitted it.

Cross-Q. 62. Previous to the beginning of the litigation in this case, in April, 1880, do you know of any instance in which either of the principal express companies insisted upon occupying the lines of any railway or steamboat company against the will or without the consent of such railway or steamboat company?

A. Yes. I don't think there is any of them but what has had that experience at one time or another.

Cross-Q. 63. State all the instances within your knowledge where an express company insisted upon occupying the lines of any transportation company in opposition to its wishes, prior to April last.

A. An instance on the Boston and Providence road of a refusal to extend facilities to the Adams Express Co.; the Delaware, Lackawanna and Western R. R. in their refusal of facilities to the Adams, United States, and American Express Companies; in the refusal of the Union Pacific R. R. Co. to Wells, Fargo & Co.; 1639 in the refusal of the St. Jo and Denver R. R. Co. to the

American Express Co.; and a great number of other instances which I can't call to mind just at this moment.

Cross-Q. 64. Did either of these express companies, refused facilities as just answered, after such refusal insist, by litigation or other means, upon occupying the lines of the railroads mentioned, in opposition to the wishes of the owners?

A. No, sir; not to my knowledge.

Cross-Q. 65. Does the American Express Company, or either of the other express companies, as far as you know, charge for the transportation of any kind of property the same freight rates as are charged by the railroad companies on their freight trains for similar services; in other words, do the express companies regulate their charges by the charges made by the railroad companies on freight trains?

A. In answer to the first, not as a rule. In some instances, where railroad companies require, under contract, the payment of a larger guaranteed tonnage than the legitimate express business of the line will warrant, they would fix such rates regardless of any rates fixed by the railroad company's freight trains as would enable them to secure sufficient amount of tonnage to make up the guarantee or cost under contract. The express companies' tariffs are based, as a rule, upon the rates that they pay the railroad companies for the service, without reference to the tariff charged the public by the railroad companies on their freight trains.

Cross-Q. 66. In your opinion, would the freight tariff charged by railroad companies on freight trains be reasonable or just compensation to either an express company or a railway company doing its own express business, where the property was carried upon passenger trains?

A. That would depend entirely on what the railway company's rates were on certain classes of business.

Cross-Q. 67. Are or not the charges for carrying property by passenger trains, as a rule, higher than those made for carrying property on freight trains?

A. They are.

1640 Cross-Q. 68. Is it reasonable and just that they should be so? And, if so, state the reason for your opinion.

A. If it costs more to run a passenger train 40 miles an hour than to run a freight train 20 miles an hour, I should consider it reasonable and just that railroad companies should make a distinction between the two classes of services.

Cross-Q. 69. As originally projected and constructed, and previous to the origin of the express business, did the patrons of the railroad companies expect or require property to be transported by passenger trains? And in the earlier stages in the transportation of property by passenger trains, was it not almost always carried as and considered express matter?

A. Well, if history can be believed, the express business started in a little ahead of the railroads; that is, they existed before the building of railroads to any extent in this country, and from time immemorial all express traffic or freight matter handled or transported by passenger trains, as a rule, has been handled by express companies.

Cross-Q. 70. What railroad companies in the United States, of which you have knowledge or information, are now doing the express business over their own lines?

A. I have no positive knowledge as to the ownership of the express business by any railroad company—meaning the stockholders of the company. There are several roads on which the express business is operated by the railroad companies in name. Among others, the Baltimore and Ohio, the Wabash R. R., the Union and Kansas Pacific railroads, and other roads in that organization; the Louisville and Nashville R. R., and the Louisville, New Albany and Salem R. R., and, I believe, the Iron Mountain road, of Missouri, and the Northern Pacific R. R. These are all I call to mind at present.

Cross-Q. 71. Is there such an express as the Pacific Express; if so, where and by whom is it operated?

A. There is an organization known by that name doing business over the Wabash and St. Louis, the Union and Kansas Pacific roads, and what are known as the Gould roads; by whom owned or controlled is a matter that I have no knowledge of.

Cross-Q. 72. Is or not the Pacific Express regarded by and
1641 understood among the principal express companies as a railroad express company?

A. No; I think it is generally understood as belonging to Jay Gould and a few of his satellites, where there are any profits to be divided, and to the stockholders of the different railroad companies over which it operates, where there are any losses to be paid.

Cross-Q. 73. Can you give an approximation as to the number of miles of railway operated by the Pacific Express?

A. I cannot. I should say less than 2,500.

Cross-Q. 74. Within the last few years has there or not developed among the stockholders in railway companies, or at least of some of the principal railways, a disposition to complain of the profits made by the express companies, and to insist that the railroad companies could do the business themselves, and thereby secure such profits to the stockholders instead of others? And has or not the state of fact induced several railroad companies to embark in the express business themselves?

A. I never heard of such complaint on the part of shareholders—in some few instances remarks of that kind by the officers of railways. The arguments used by the officials has resulted in a few cases in the express facilities being taken from the old express organizations and given to others; whether the owners of the railroad proper or the managers or officers of the property, I am not informed.

Cross-Q. 75. Have you any interest in shares of railway stock?

A. I have.

Cross-Q. 76. Have you interests in express company stock, larger or smaller?

A. Smaller.

Cross-Q. 77. Are your personal profits derived yearly from express companies from all sources larger or smaller than those derived from railway interests?

A. I decline to answer.

Cross-Q. 78. Do or not the expressmen, as a class, regard
1642 with an unfriendly eye the efforts of certain railroad companies
to do their own express business over their own lines, and do you or not partake of that feeling?

A. Not in the least. If the railroad companies will continue to extend to the express companies the same terms and facilities for their business as heretofore granted, we haven't the slightest objection to the entire railroad system of the United States entering into the express business. At the same time, from having labored and built up the business to its present magnitude, and always having paid the railroad companies fair and reasonable rates, and all they demanded, we do not consider that it is showing very good faith toward the express interests to come in and take the business away from us without so much as asking "by your leave."

Cross-Q. 79. Do the principal express companies, those you have heretofore named as such, as far as your knowledge extends, enter into competition with each other, by any two or more of them attempting to operate any one line of railway at the time, and for general express purposes?

A. No; not so far as the old organizations are concerned—the Adams, United States, American, Wells, Fargo & Co.

Cross-Q. 80. You spoke on yesterday of receipts issued by the American Express Company to its patrons for property committed to its care. Will you please annex to this deposition, and as part of the answer to this question, copies of such receipts, marked by you with your initials for identification?

A. I produce the receipts, and have marked them for identification:

FREIGHT OR MONEY.

(Read conditions of this receipt.)

(60) AMERICAN EXPRESS COMPANY,
65 BROADWAY, NEW YORK, ——, 18—.

Received of ——, said to contain ——, valued at —— dollars, marked at ——, which we undertake to forward to the nearest point of destination reached by this company, subject expressly to the following conditions, namely: This company is not to be held liable for any loss or damage, except as forwarders only, nor for any loss or damage by fire, by the dangers of navigation, by the act of God or the enemies of the Government, the restraints of Government, mobs, riots, insurrections, pirates, or from or by reason of any
of the hazards or dangers incident to a state of war. Nor shall
1643 this company be liable for any default or negligence of any
person, corporation, or association to whom the above-described property shall or may be delivered by this company for the performance of any act or duty in respect thereto, at any place or

point of the established routes or lines run by this company, and any such person, corporation, or association is not to be regarded, deemed, or taken to be the agent of this company for any such purpose; but, on the contrary, such person, corporation, or association shall be deemed and taken to be the agent of the person, corporation, or association from whom this company received the property above described. It being understood that this company relies upon the various railroad and steamboat lines of the country for its means of forwarding property delivered to it to be forwarded, it is agreed that it shall not be liable for any damage to said property caused by the detention of any train of cars or of any steamboat upon which said property shall be placed for transportation; nor by the neglect or refusal of any railroad company or steamboat to receive and forward the said property.

It is further agreed that this company are not to be held liable or responsible for any loss of or damage to said property, or any part thereof, from any cause whatever, unless in every case the said loss or damage be proved to have occurred from the fraud or gross negligence of said company, or their servants; nor in any event shall this company be held liable or responsible; nor shall any demand be made upon them beyond the sum of fifty dollars, at which sum said property is hereby valued, unless the just and true value thereof is stated herein; nor upon any property or thing, unless properly packed and secured for transportation; nor upon any fragile fabrics, unless so marked upon the package containing the same; nor upon any fabrics consisting of or contained in glass. If any sum of money besides the charges for transportation is to be collected from the consignee on delivery of the above-described property, and the same is not paid within thirty days from the date hereof, the shipper agrees that this company may return said property to him at expiration of that time, subject to the conditions of this receipt, and that he will pay the charges for transportation both ways, and that the liability of this company for such property, while in its possession for the purpose of making such collection, shall be that of warehousemen only. In no event shall this company be liable for any loss or damage, unless the claim thereof shall be presented to them in writing at this office within ninety days after this date, in a statement, to which this receipt shall be annexed. The party accepting this receipt hereby agrees to the conditions herein contained.

For the company: —— ——, *Agent.*

Not negotiable.

COLLECTIONS.

(61) AMERICAN EXPRESS COMPANY,

65 BROADWAY, NEW YORK, —— —, 18—.

Received for collection of ———, the following-described

1644 ——, $———, subject expressly to the following conditions, namely: This company is not to be held liable for any loss or damage, except as forwarders only, nor for any loss or damage by fire, by the dangers of navigation, by the act of God or of the enemies of the Government, the restraints of Government, mobs, riots, insurrections, pirates, or from or by reason of any of the hazards or dangers incident to a state of war. Nor shall this company be liable for any default or negligence of any person, corporation, or association to whom any account, note, bill of exchange, draft, or other evidence of indebtedness shall or may be delivered by this company, for the performance of any act or duty in respect thereto, at any place or point off the established routes or lines run by this company; and any such person, corporation, or association is not to be regarded, deemed, or taken to be the agent of this company for any such purpose; but, on the contrary, such person, corporation, or association shall be deemed and taken to be the agent of the person, corporation, or association from whom this company received such account, note, bill of exchange, draft, or other evidence of indebtedness. Further, this company is not to be liable for any loss or damage which may result from any omission to protect any such note, bill of exchange, or draft, unless express direction to do so be given to this company, when the same shall be received by it, and indorsed hereon. And in no case shall this company be liable to pay over collections made by it in any other than funds current at the place of collection, unless special instructions shall be given to this company and indorsed hereon as to the mode or manner of remitting the proceeds of such collection.

For the company: —— ——, *Agent.*

Redirect:

R. D. 81. Is your company, or its business, taxed by any—and, if so, what—State?

A. I think almost every State in which we are doing business we pay taxes on our real estate and personal property, and in several of the States are taxed upon the gross earnings of the business within that State.

R. D. 82. If a railroad company were actually engaged in the conduct of an express business over its own line, would that fact constitute a factor of any—and, if so, of what—importance in determining the question what would be a just and reasonable price for an express company proper to pay for express facilities over that line of railroad?

A. Yes; I should think it would be a matter of importance
1645 in determining a proper rate to be charged by the railroad to
the regularly organized express company.

JAMES C. FARGO.

Sworn to before me.

JOSEPH GUTNAM,
Commissioner.

A B C Pathfinder Express List.

June, July, August, 1880.

EXPRESSES.

☞ Two distinct catalogues are presented in this express list, the first of which, in the wide columns, must be consulted to ascertain the office and hours of departure of any particular express; the second, in the succeeding columns, to find what express runs to a given town or city.

Bed., Bedford; Cent., Central; Ct. Sq., Court Sq.; Dev., Devonshire; F. H. Sq., Faneuil Hall Sq.; Frank., Franklin; Kil., Kilby; King., Kingston; M. R., Merchants' Row; Q. M., Quincy Market; So. M., South Market; Wash., Washington; O. B., Order Book.

*Names in SMALL CAPITALS members of Expressman's League.

OFFICES AND HOURS OF LEAVING CITY.

*ABBOTT—200 Frank., 75 Kil., 48 King., 36 Ct. sq., 25 M. R., 7, 10.15, 2.00, 4, 5.15.

*ADAMS EXPRESS (South & West)—28 to 40 Court st., via Norwich Line, 4.00 p. m.; via Springfield, 6.30 p. m.; via Short Line, 7.00 p. m. For points on N. Y. & N. E. R. R., 7.00, 12.15, 2.30; Southbridge Local, 7.00, 2.30; Franklin Local, 7.00, 11.30, 4.30; Woonsocket Local, 7.00, 11.30, 2.30; Hartford, New Haven, and points beyond in Connecticut, 7.00, 12.15, 2.30, 6.00, 7.00; Providence, Pawtucket, Central Falls, and all points in Rhode Island, 8.00, 11.30, 2.30, 5.00. For Worcester and stations between Boston and Worcester on B. & A. R. R., 6.30, 10.30, 12.15, 3.45. Saxonville Br., 8.30, 5.15. Milford Br., 6.30, 1.30, 3.45. Branch offices, 75 Bed., 222 Federal sts. (Above are times of leaving Court st. office.)

Adams, A. W.—200 Franklin st.; 24 F. H. sq., 2.00.

Aldrich—8 Fulton st., 32 Merchants' Row, 12, 4.00.

*ALGER & Co.—34 Court sq., 174 Washington st., 2.00, 4.

Allen & Co. (Haverhill)—26 Devonshire, 143 Milk, 51 High sts., 48 So. Market, 11.00, 3.00, 4.30.

*ALLEN E. (Boston Highlands)—91 Kilby, 12.5; 174 Washington sts., 34 Court square, and 48 Kingston, 11, 5.

Allen, A. B. (Boston Highlands)—36 Court sq., 11.30, 5; 77 Bedford st., 12.30, 5.30 p. m.

Allen, C. T. (Chelsea)—26 Devonshire, 30 Brattle, 11.5.

*AMERICAN Ex.—244 Washington—freight received at 67 Devonshire, 34 Albany, O. B., 25 Mer. Row. 5 a. m., train for Western Mass. and all Western points. 3.00 p. m., local train for all towns on B. & A. R. R. west of Worcester; also, for points on Conn.
Riv. R. R., Springfield, Athol & N. E. R. R., and New Lon-
1646 don Northern R. R. 3 p. m., Fast Express for the West,
Southwest, and Northwest, making close connections to St.
Louis and all other Southwestern territory. 6.00 p. m., through
Western express for Western Mass., N. Y. State, and the West gen-

erally. Also agents for National Express Co. (Above are times of departure of trains from depot. Goods should be at office at least half an hour previous.)

*American-European Express—E. A. Snow, agt.—40 Court street, every European steamer from Boston and N. Y., all parts of Europe and the East. Amerige & Fiske—25 Merch. Row, 60 High, 5.

*Amesbury Ex.—32 & 34 Ct. sq., 200 Frank. st., 2, 4.

Andrews—26 Devonshire, 200 Frank., 34 Ct. sq., 1, 4.

*Atlas Parcel Ex. (Foreign), Wm. Gibbs, Jr., agt.—200 Frank., by every st'm'r from Boston and N. Y.

Atwood & Co.—33 Court sq., 48 Kingston st., 4; 75 Kilby st., 26 Devonshire st., 48 No. Market, 3.30.

Ayer & Co. (Haverhill)—200 Franklin, 91 Kilby, 48 Kingston, 33 & 36 Court sq., 11.30, 4.15; cellar, 4 F. H. M'kt.

Ayer & Son (Winchester)—174 Washington st., 3.00; 34 Court sq., 3.00; 200 Franklin, 91 Kilby st., 2.00.

Bailey—91 Kilby st., 34 Court sq., 10.30 a. m., 3.15 p. m.

Baker (Dedham)—34 Court sq., 11, 2.30, 3.45.

*Baker & Co. (Weymouth)—91 Kilby, 34 Court sq., 2.00; 24 S. Market st., 25 Merchants' Row, 11, 2.

*Bancroft—174 Washington st., 34 Court sq., 11, 4.

Barker & Tibbetts—26 Devonshire, 12, 5; 75 Kilby st., 11.30, 5; 37 & 39 Quincy Market.

Barrett—50 No. Market st., 4 Central st., 11.30, 2.30.

*Barron—34 Court sq., 43 No. Market st., 2.00.

Bachelder—33 Ct. sq., 200 Franklin, 75 Kilby, 4; 43 N. M'kt, 25 Merchants' Row, 4.00.

Beal (Dorchester)—25 Merchants' Row, 4.

*Beal (Nantasket st.)—75 & 91 Kilby, 34 Court sq., 1, 3; 25 Merchants' Row, 26 Devonshire, 4.30.

Beal (Gloucester)—174 Wash., 4; 48 King., 10.45, 4.

*Beals (Cohasset)—91 Kilby st., 1.15; 26 Devonshire, 1.

*Bean—200 Franklin, 91 Kilby, 33 Ct. sq., 12.30, 4.30.

Bell (Danvers, &c.)—174 Wash. and 65 High st., 2.00.

Bell (Highlands)—4 Central st., 11, 4.30; 43 N. M'kt st.

*Benjamin & Vaughn—174 Wash'n, 34 Court sq., 48 Kingston, 200 Franklin sts., 2.30, 3; 43 N. Market.

*Bettinson—91 Kilby, 32 Court sq., 77 Bedford st., 30 Brattle st., 11, 5.00.

Billings (Brighton)—26 Dev., 75 Kil., 7 M. R., 11, 5.

Billings (Norwood)—75 Kilby st., 2.

*Blake & Co.—34 Ct. sq., 11, 4; 200 Franklin, 174 Wash. & 91 Kilby, 77 Bedford, 10, 4; 24 So. Market st., 11, 3.

Bosworth—200 Franklin, 91 Kilby st., 36 Court sq., 2.

*Boston & Worc. Desp.—91 Kil., 48 King., 10.30, 1, 5.

Bourke—174 Washington st., 11, 2.00; 43 No. Market st.

Bowditch Ex.—48 King., 33 & 36 Ct. sq., 3; 10 F. H. sq.

*Bowman & Perkins—34 Ct. sq., 2.30, 4; 200 Franklin, 31 N. Market st., 2.00, 4.15.

*Brackett—32 Court sq., 3, 5; 200 Franklin st., 2.30, 4.

Bragdon—36 Court sq., 2.00.

Breed, J.—31 So. Market street, 3.00 p. m.

***Brewer** & Co.—200 Franklin, 91 Kilby st., 77 Bedford st., 36 Court sq., 12, 5.

Briggs—174 Wash., 88 High, 1.00.

Brock & Crane—53 South Market st., 1.00 p. m.

1647 Brogen—4 Central, 15 Blackstone, 11.00, 5.00

***Brooks**—34 Court sq., 3.30.

Brooks & Davis—32 Court sq., via Fitch. R. R., 3.30, 5.30.

***Brooks, Rushton** & Co.—75 Kilby, 11.30, 2, 3.40, 4.30; 34 Court sq., 174 Wash. st., 25 Merch. Row, 11, 2, 4.

Brown—75 Kilby, 2.

Buck—4 Central st., 12.00, 5.30.

Bullard—91 Kilby st., 11.30, 2.30.

Burrill—26 Dev., 200 Franklin, 1, 3.30; 60 High.

Butland—25 Merchants' Row, No. 17 N. Market st., 122 State st., 11.00, 4.30.

Butler—43 North Market st., 10 F. H. sq., 3.00 p. m.

Buzzell—34 C't sq., 174 Wash., 91 Kil., 200 Frank., 11, 3.00.

***Byam Bros**—34 Court sq., 91 Kilby st., 11, 4.30.

Calley—25 Merchants' Row, 41 High, 1.30.

Canadian Express Co—39 & 40 Court sq., 6.15 a. m. and 6.45 p. m., for the Canadas.

Cape Cod—200 Franklin, 6.45, 2.30, 3.15, 5.45; O. B. 25 M. R.

Cardell—136 Washington st.

Carter & Co—26 Devonshire st., 11, 3.00, 4.30.

Cashman—77 Bedford, 25 M. R.; 43 N. Market, 11, 4.30.

Chandler & Gleason—174 Washington st., 1.00, 4.00.

Chase (Cambridgeport)—91 Kilby st., 11, 5.00.

Chase (Brookline)—34 Court sq., 174 Washington st., 91 Kilby st., 200 Franklin st., 11, 3.

***Cheney**, W.—174 Wash., 32 Court sq., 11.00, 4.30.

Cheney, A. W. & Co.—75 Kilby, 200 Franklin sts., 25 Merchants' Row, 11.00, 5.00.

Chesley—4 Central, 11, 5; 10 & 38 F. H. sq., 69 Union.

Childs & Kent—75 Kilby st., 4, 5.30; 41 No. Market st.

Clements—36 Court sq., Tuesdays, 10.30 a. m.

***Cogswell** & Co.—32, 34 C't sq., 9.45, 11.30, 3, (Middleton 3, 15), 4, 5.45; 91 Kil., 9.15, 11, 2.15, 4, 5.15; 77 Bed., 9.15, 11, 2.30, 4.00, 5.30; 174 Wash., 11, 2, 4.

Colburn—7 Merchants' Row, 24 F. Hall sq. 11.30, 5.

Conant—36 C't sq., 200 Frank., 77 Bed., 11, 4.30.

Cook—27 & 29 Arch st., 3.30 p. m.

Coolidge—26 Devonshire, 34 Brattle, 11, 5; 31 F. H. sq.

Coolidge & Holbrook—174 Washington st., 75 & 91 Kilby st., 32 & 34 Court sq., 11, 5; 48 Kingston st., 11.30, 4.30.

Cordis—200 Franklin, 10 F. H. sq., 3 N. Market st., 2.00.

Corson—75 Kilby st., 4.00 p. m.; 43 N. Market st., 4.00.

Coverly—174 Washington st., 11, 4.00.

Cox—4 Central st., 43 N. Market, 3.

Crane, H. Jr.—200 Frank., 25 Merch. Row, 10 F. H. sq., 3.

Critchett—91 Kilby, 200 Franklin, 3.00; Cellar 3, Q. M'kt.

Cronin—92 Blackstone st., 4.00.
*Cummings—174 Wash., 34 C't sq., 10, 2; 25 M. R., 9, 11, 3.
Cunningham & Co. (Medford)—26 Devonshire st., 3.00.
Cunningham (Wakefield)—75 Kilby, 2; 50 So. Market st.
*Currier & Co. (Gloucester, &c.)—36 Court sq., 2, 4; 77 Bedford st., 10.45, 3.15; 4 Central, 11, 4.
*Currier (So. Boston)—33, 36 Court sq., 12, 5; 75 Kilby st., 11.30, 4.30.
Currier Bros. (Maplewood)—36 Court sq., 31 F. H. sq., 4 Central st., 2.00.
Cushing—174 Wash., 100 High, 8, 1, 4; 75 Kilby st., 4.
Cushman & Co—91 Kilby st., 34 Court sq., 11, 4.
Dame—Cellar 3 Quincy Market, 5.00.
Danehey—15 Blackstone, 7 Mer. Row, 10 F. H. sq., 11, 4.
1648 *Dart & Co—34 Court sq., 1, 3; 200 Franklin, 1.30, 4; 77 Bedford st., 25 Merchants' Row, 12.45, 3.15.
Davenport & Mason—200 Franklin st., 6.45, 10.35, 3.45, 11.30, 2.30, 3.40; O. B., 25 Merchants' Row.
Day, G. T.—7 & 25 Merch. Row, 26 Dev., 43 M'kt, 11.30, 5.
Day, L. L.—26 Devonshire st., 43 N. M'kt, 11.30, 4.30.
*Davis (Brighton)—174 Wash., 200 Frank., 33 C't sq., 2.
Davis (Manchester)—200 Franklin st., 33 C't sq., 12.30, 3.30.
Davis, Thos. F—31 No. Market, 41 So. Market sts., 9, 5.
*Decatur—32 Court sq., 11.00; 5.00; 10 F. H. sq.
Delano—36 Court sq., 91 Kilby, 11.
*Dennie—32 Court sq., 200 Franklin, 77 Bedford, 11, 4.30.
Devir—43 No. Market st., 148 Blackstone st., 3.30 p. m.
Dexter—4 Central, 40 Bromfield, 67 North sts., 11, 4.30.
*Dillingham—34 Ct. sq., 174 Wash., 91 Kil., 200 Frank., 2.
Dinsmore—33 Court sq., 3.30.
*Dodge (Charlestown)—4 Central st., 11.00, 5.00.
*Dolhenty & Co.—32 & 33 Court sq., 11, 4.30.
Douglass—Co.. F. H. M'kt & Merchants' Row, hourly.
Dow (Cambridgeport)—77 Bedford st., 15 Dock sq., 11, 5.
Dow (Auburndale)—7 Merch. Row, 2.
*Drew—174 Wash., 73 High, 11, 3; 200 Frank., 10.30, 2.30.
Driscoll—36 Court sq., 77 Bedford st., 12, 3.
Dunn—38 F. H. sq.
Durnan—174 Wash., 12.45, 5.45; 33 C't sq., 75 Kil., 48 King., 200 Frank., 12.30, 5.30; 7 M. R., 12, 5.
Dyer (Newton)—200 Franklin st., 2.00
Dyer (So. Scituate)—36 Court sq., 2.00.
Earle & Prew—200 Franklin st., 7.00, 10, 1.30, 3.30, 5.00; 34 Ct. sq., 91 Kilby, 9.30, 1, 3, 4.30, 5.30; 25 Merch Row.
East Boston Ex.—75 & 91 Kilby st., 48 Kingston st., 32 & 34 Court sq., 174 Washington st., 11.30, 4.30.
*Eastern Express Co. (American Ex. Co. prop.)—244 Wash. st.; freight, 67 Dev. and 122 Canal sts., O. B. 15 Mer. Row, for all towns having railroad or steamboat connection in the State of Maine, and New Brunswick, Nova Scotia, and Quebec; also towns in New Hampshire, on the Great Falls, Conway and Portland and

Ogdensburg railroads to the White Mountains. Leaving by all through trains on the Eastern and Boston & Maine railroads, and by all steamboats from Boston and Portland to the Penobscot river, Machias, Eastport, and St. John.
*EASTMAN—174 Washington st., 2.30; 200 Franklin, 2.
Eaton, E. J.—174 Wash., 10, 1, 3; 48 King.; 200 Frank., 11, 2, 4.
Eaton (Wakefield)—34 Court sq., 91 Kilby and 27 North Market st., 10 a. m., 3.00 p. m.
Edgerly—4 Central st., 2.30; 27 & 31 No. Market st., 3.00.
Elms, G. W.—77 Bedford st., 4 Central, 3.30; 10 F. H. sq.
Elms, R. N.—91 Kilby st., 10 F. H. sq., 3.00.
Elword—91 Kilby st., 4.30.
Emerson—174 Washington st., 1.00, 3.00, 4; 26 Devonshire st., 3; 34 Court sq., 3.30; 75 Kilby st., 3.00.
Emerton—26 Dev., 7 Merch. Row, 33 N. Market, 3.
European Express (see Wells, Fargo & Co.).
Farwell—27 No. Market st., 11.30 a. m., 5.00 p. m.
Fears & Bray—32 Court sq., 12.30, 4.15.
Fenner—25 Merchants' Row, 11, 4.30.
Field (So. End)—26 Devonshire st., 11.00 a. m, 5.00 p. m.
Fields (Mt. Pleasant)—32 Court sq., 2.00 p. m.
Finley—4 Central, 30 Brattle, 11, 5; 77 Bedford, 12, 5.
1649 *FISHER—34 Court sq., 91 Kilby st., 11, 4.30.
Fisk, G. W.—30 Brattle st., 43 N. Market st., 12, 5.
Flint (N. Reading)—33 Court sq., 43 N. Market st., 2.00.
Fluent—10 F. H. sq., 102 Blackstone st., 11.00, 5.00.
Ford (Marshfield)—174 Washington st., 34 Court sq., 2.
Foster—26 Devonshire, 1; 7 Merch. Row, 2.
Fox—33 Court sq., 11, 4.30; 35 No. Market st., 26 F. H. sq.
Frye & Co.—200 Franklin, 11.45, 3.45; 174 Wash'n st., 12, 4.
Fuller—17 No. Market st., 3.
Galagher—36 Court sq., 92 Blackstone st., 2.00.
Garmon—200 Franklin, 1; 33 Court sq., 92 Blackstone st., 2.00.
Garrigan—39 No. Market st., 11, 4.
Garrity—174 Washington st., 10 F. H. sq., 2.00.
*GAVITT—75 Kilby st., 12.00, 5.00.
*GAY—91 Kilby st., 3 p. m.; 34 Court sq., 2.00.
*GIBBS & CO.—200 Franklin st., 34 Court sq., 25 Merchants' Row, 31 F. H. Market, 11, 1, 4.30.
Gifford—7 Merchants' Row, 11.30, 5.
Gillett & Co.—32 Court sq., 12, 2.45, 4.15; 75 Kilby st., 10.30, 2, 3; 41 High st.
Gilman—36 Court sq., 11, 4.30.
Goodwin & Co.—34 Court sq., 2.45; 200 Franklin st., 2.30.
*GOVE—174 Wash., 200 Franklin st., 10, 4; 100 High st.
Gowell—10 F. H. sq., 46 Hanover, 30 Brattle, 11.30, 4.30.
Griffin—91 Kilby st., 11 a. m., 2.00 p. m.
Grimes—48 Kingston st., 4.00; 123 Clinton st.
*GROSE—174 Washington st., 11.00 a. m., 2; 115 High st.
Hall (Highlands)—10 F. H. sq., 11, 5.
Hall (Charlestown)—26 Dev., 12.00, 4.30; 43 N. M'k't.

Harding—36 Court sq., 10 F. H. sq., 10, 4; 31 No. Market.
Harmon—3 Hawley st., 40 Merchant's Row, 11, 4.30.
Harris—26 Devonshire st., 1.00; 2 Commercial st.
Hart, B. (W. Quincy)—200 Franklin st., 2; 43 N. Market st., 10 F. H. sq., 2.30.
*HART & Co. (Woburn)—75 Kilby, 9, 12.30, 4; 200 Franklin st. 9.00, 12.00, 3.30; 33 Court sq., 10.00, 12.30, 4.30; 77 Bedford st., 9, 12, 4; 39 N. Market.
Hartney—43 No. Market st., 3.00.
*HARTSHORN (Neponset, &c.)—174 Wash'gton, 34 Court sq., 91 Kilby st., 47 F. H. Market, 3.00.
Hartshorne (Berlin)—39 & 40 Court sq., 1.15, 4.30 p. m.
Hatch & Co. (New Bedford)—200 Franklin, 7, 10.30, 3.45. O. B., 25 Merchants' Row.
*HATCH & Co. (Cambridge)—91 Kilby st., 77 Bedford st., 11, 5.00; 36 Court sq., 25 Merchant Row, 11.30, 5.
Hatch (Belmont)—34 Court sq., 2.30; 94 F. H. Market.
Hawes—33 & 36 Court sq., 75 Kilby, 77 Bedford, 2; 25 Merchants' Row, 3; 37 Q. Market.
Hawkins—174 Washington st., 91 Kilby st., 2.00.
Hayes—32 Court square, 11.30 a. m., 5.00.
Hayward & McMullen—10 Faneuil Hall sq., 11.00, 5.00.
Hayward—36 Batterymarch st., 12.
Heinlein—77 Bedford st., 2.00.
Henry—36 Court square, 1.00 p. m.
Hewins & Co.—200 Franklin st., 6.45, 2.45.
Higgins—115 Water, 71 North, 32 F. H. M'k't, 12, 5.
Hill—9 Merchants' Row, 12.00, 5.00; 10 F. H. sq.
*HILL & Co. (Francestown & Methuen)—26 Devonshire st., 11.30, 4.30.
*HILL & Co.—75 Kilby, 26 Devonshire sts., 11.30, 4.30.
1650 Hilton & Sons—91 Kilby st., 12.30, 3, 5.30; 33 Court sq., 12, 3, 5; 77 Bedford st., 200 Franklin st., 12, 2.30, 5.
Hobbs—77 Bedford, 97 Blackstone sts., 11, 5; 10 F. H. sq.
Holman—1½ Somerset st., 88 F. H. M'k't, 4; 24 F. H. sq.
Holmes (So. Boston)—10 F. H. sq.
Holmes (Sharon)—91 Kilby st., 1.00.
Holmes, E. D. (Medford)—174 Washington st., 2; 53 So. Market st., 3.00; 10 F. H. sq., 2.30.
Hoosac Tunnel Ex. Co.—39 & 40 Court sq., 6.15, 2.15, 5.15.
Hopkins—10 F. H. sq., 2.30.
Hosie—91 Kilby, 48 Kingston, 10 F. H. sq., 2.30.
*HOUGHTON—34 Court sq., 1.00, 5.00.
Howard—7 Merchants' Row, 4.
*HOWE & Co. (Hingham)—174 Wash., 91 Kilby, 10, 1.30, 3.
Howe & Co. (Natick)—91 Kilby st., 34 Court sq., 10.30, 2.30.
Hoyt & Co. (Maine)—75 Kilby, 77 Bedford, 1.30, 3.15.
Hunting—174 Washington st., 34 Court sq., 2.00 p. m.
*HURD—34 & 36 Court sq., 174 Washington st., 3.00 p. m.
Hussey & Co.—32 Court sq., 3; 200 Franklin st., 2.30.
Hyland—174 Washington st., 26 Devonshire st., 2.
*JACKSON & Co.—32 Court sq., 12, 2.30, 4.15.

*JENISON—34 Court sq., 91 Kilby st., 1.00.
*JENKINS—36 Court sq., 26 Devonshire st., 12.00, 5.
*JENNESS & TWOMBLY—34 Court sq., 117 Frank., 11, 5.
*JEWETT & HOLTON—32 & 34 Court sq., 174 Wash. st., 91 Kilby st., 11.00, 4.00; 77 Bedford st., 11.30, 5.00.
Johnson & Co. (Nahant)—200 Frank., 1 p. m., Wed. & Sat.
*JOHNSON (Andover)—32 Ct. sq., 200 Frank., 11.30, 2.30.
Johnson (Brookline)—4 Central st., 4; 24 So. M'k't st., 12, 3.
Jones & Co. (Newton, U. F.)—91 Kilby st., 2.00.
Jones & Co. (E. Boston)—43 N. Market st., 12, 5.
Jones & Co. (Campello)—33 Ct. sq., 200 Franklin st., 10.00, 3.50; 122 Summer st., 102 High st., 43 N. Market st.
Joslyn (Brockton)—77 Bedford st., 10.30, 2.00, 5.15; 32 & 34 Court sq., 10.30, 1.00, 4.30.
Josselyn (No. Andover)—33 Court square, 3.00 p. m.
Keith—17 and 31 No. Market st., 12, 5.
Kendall—38 N. Market st., 5.30.
Kenney—33 Court sq., 3; 48 Kingston st., 2.30; 43 N. Market st., 3.
Kilbraith—48 Kingston st., 11, 5.00.
King—4 Central street, 12 F. H. sq., 12 m., 5 p. m.
Kinsley Express Co.—200 Franklin O. B. 25 Merchants' Row, 7.40, 12.30, 2.30, for Fall River and Newport; 3.30 for Fall River only.
Knight—27 No. Market st., 8.00, 12, 5.
Knight & Son—27 Cornhill; box 12 Broomfield st., 5, 6.
Lane—174 Washington st., 3.30 p. m.
*LANG—33 Court sq., 1.00; 43 No. Market.
*LATHROP—200 Franklin st., 1.00; 13 F. H. Market.
Lawrence & Co.—67 Dev., 244 Wash., 11.30, 1.00, 4.00.
Leslie—36 Court sq., 25 Merchants' Row, 2.30.
*LIBBY (So. End)—26 Devonshire st., 36 Court sq., 11, 5.
Libby & Co. (E. Weymouth)—91 Kilby st., 2.
Linnell & Co.—174 Wash'n, 200 Franklin sts., 11.00, 3.00.
Litchfield—26 Devonshire st., 1.00 p. m.
*LITTLE (Merrimack)—33 Court sq., 2.00.
*LOCKE—32 & 34 Court sq., 75 Kilby, 25 Mer. Row, 12, 5.
*LONDON—34 Court sq., 10.30, 4.30; 48 King st., 10, 4.
1651 Lovejoy & Co.—33 Court sq., 7.00, 9.00, 11, 2.00, 4.00, 5.30; 200 Franklin, 9, 11, 2, 4.00, 5.30; 48 Kingston st., 8.45; 10.30, 1.30, 4, 5.00.
*LOVETT—34 Ct. sq., 91 Kil., 77 Bed., 41 High, 11, 2, 4.
Lowell—91 Kilby street, 3.00 p. m.
Lufkin—36 Court sq., 2.00.
Macomber—49 Friend st., 5.00.
Magee—36 Court sq., 49 No. Market st. 3.00 p. m.
*MARBLE—34 Court sq., 200 Franklin st., 77 Bedford st., 25 Merchants' Row; 25 High st., 11, 3.30.
Marean—75 Kil., 2, 4; 200 Frank., 48 King., 4 F. H. M'kt, 1.
Marshall (Rockport)—200 Franklin st., 36 Court sq., 1, 4.
Marshall (Essex)—32 Court square, 2.30.
*MARSHALL & MOULTON—32 C't sq., 174 Wash., 12, 2, 4.
Marston—91 Kilby st., 1, 3.30.

McClellan—36 Court sq., 2; 27 No. Market st.
McConarty—4 Central, 10 F. H. sq., 2.30.
McCuin & Burns—36 Court sq., 1.30, 3.30.
*McCrillis—200 Franklin, 12, 5; 33 Court sq., 11.30, 4.30.
McIntosh—174 Washington street, 2.00.
McNealy—4 Central st., 2.30; 10 F. H. sq., 37 Q. M'kt, 2.
Mears—75 Kilby, 26 Devonshire st., 2.00.
Merchants' Ex.—91 Kilby st., 77 Bedford st., 1.30, 3.15.
*Merritt & Co.—25 Merchants' Row, 11.30, 3.30, 5.30; 33 & 36 Court sq., 200 Franklin st., 77 Bedford st., 11, 2.30, 5; 75 Kilby, 174 Washington, 48 King, 60 High st.
Merritt & Davidson—174 Washington st., 91 Kilby st., 200 Franklin st., 100 High st., 10.00, 1.00, 4.30.
Messenger—91 Kilby st., 1 Merchants' Row, 11.00, 5.00.
Messer—10 F. H. sq., 11, 5.
Metropolis—91 Kilby st., 5.00.
*Middleton—33 Court sq., 11; 91 Kilby st., 10.
Miller—43 N. Market st., 33 Court sq., 2.
Milliken—26 Devonshire st., 11.00, 5.00.
Mills Bros.—34 Court sq., 2.00.
Moody—7 & 25 Merchants' Row, 3.00.
Moore (Dorchester)—26 Devonshire st., 37 Q. Market, 3.
Moore (E. Boston)—4 Central, 17 & 31 N. M'kt, 12, 5.30.
Morrill & Co.—75 Kilby st., 9.30, 11.30, 2.00, 3.30, 5.30; 34 Court sq., 174 Washington st., 77 Bedford st., 8.30, 11, 1.00, 4.00, 5.30.
Morrison—36 Court sq., 118 Blackstone st., 11, 4.30.
Morse—200 Franklin st., 3.00.
Moses—31 Brattle st., 10 Faneuil Hall square, 4.00.
Moulton (Salem)—91 Kilby st., 128 State street, 11.30, 3.30, 5.15; 48 Kingston st., 11, 2.30, 5.00.
Moulton (No. Weymouth)—26 Devonshire, 2; 10 F. H. Sq.
Munroe & Arnold—174 Wash. st., 128 State st., 3.30.
Nally—4 Central st., 3.30; 43 No. Market st.
Ney—4 Central st., 1 & 43 No. Market st., 12, 5.00.
Needham—200 Franklin st., 2.00; 31 F. H. Market.
*New Express Co. and Baltimore & Ohio Express—168 Dev. st., 48 King., 5.30 p. m. for New York, South, and West; 5.45 p. m., for Hartford and New Haven; 8.30, 11.45, 3.00, 5.30 for Providence; 6.30, 10.30, 12.45, 3.30 for Worcester.
*Newhall & Marston—34 C't sq., 75 Kilby st., 11.30, 2, 4; 200 Franklin st., 11, 2.00, 4.00.
Newton—39 Court sq., 1.15, 4.30.
*New York & Boston Des. Ex. Co.—200 Frank., O. B. 25 M.
1652 R. (5.30 p. m., for New York and Phila.) (7.40 a. m., 12.35,
2.40, 3.40 p. m., for Fall River and Newport), Cape Div., 7, 3,
Hartford and New Haven, 5.10.
*New York & Phil. New Line & N. Y. & New England States Ex.—168 Devonshire st., 1, 5.30.
*Niles & Co.—33 Court sq., 7.00, 3.30; 77 Bedford st., 75 Kilby st., 11.15, 1.00, 4; 34 Court sq., 7, 12, 3, 4.30.
Norton—81 Blackstone street, 110 State st., 11, 4.30.

No. Cambridge Ex.—33 Court sq., 25 Merch. Row, 11, 4.

Norwood—21 Portland, 52 Blackstone, 23 Union sts., 5.

Ocean Express (Foreign)—200 Franklin st. For all parts of Europe and the East, Wm. Gibbs, Jr., ag't, every steamer, from Boston and New York.

*O'CONNOR—91 Kilby st., 2.00.

*PAGE & CO.—75 Kilby, 10.30, 1.00, 4.30; 33 C't sq., 10, 1, 4.

Paine—174 Washington, 25 Merchants' Row, 11.30 a. m., 4.00.

Parmenter—43 North Market st., 11.30 a. m., 5.00 p. m.; 1.30 Federal st., 11.00 a. m., 4.30 p. m.; 36 Court sq., 11.00, 4.00. Order box at Bussy Place, off Arch st.

*PARKER (Medfield)—34 Court sq., 2.30.

Parker (W. Roxbury and Roslindale)—75 Kilby st., 200 Franklin st., 20 So. Market st., 2.

Parker & Son (Saugus)—91 Kilby, 2.45; 7 So. Market st.

*PARKER & CO. (Cochituate)—77 Bedford st., 10.30, 3; 75 Kilby st., 10, 3.00; 25 Merchants' Row.

Parrott—4 Central st., 40 F. H. square, 3.30.

Patterson—26 Devonshire st., 6 No. side F. H. M'k't, 2.30.

Pearson—33 Court sq., 91 Kilby., 48 King., 200 Frank., 3.

*PENNIMAN (So. Abington)—174 Wash'gton st., 1, 3.30.

Penniman & Co. (Lowell)—75 Kilby, 9.30, 11.30, 2, 3.30, 5, 5.30; 34 Court sq., 8.30, 11, 1.00, 3, 4, 5.15; 174 Wash'n, 77 Bedford, 8.30, 11.30, 1.45, 3, 4.30, 5.30.

Penobscot River Express Co.—91 Kilby st., 4.00.

*PERHAM—75 Kilby, 110 State, 15 Union sts., 10.30, 4.30.

*PERKINS & CO. (Exeter N. H., &c.)—33 C't sq., 12, 3, 4.30; 200 Franklin st., 77 Bedford st., 11, 2.00, 4.00.

Perkins (Chelsea)—61 Blackstone st., 11.30, 5.00.

Peters—33 Court square, 1.30, 4.30.

*PETERSON (Duxbury)—34 & 36 Court sq., 2.00.

Peterson (Highlands)—7 Merchants' Row, 11.00, 5.00.

*PEYSER—34 & 36 Court square, 3.00, 5.00.

*PICKETT—91 Kilby st., 2.00.

Pierce (Walpole)—28 & 40 Court street, 7, 2.30.

Pinkham—75 Kilby, 26 Devonshire, 48 Kingston sts., 7 Merchants' Row, 11.30, 3.30; 32 High.

Pope—4 Central, 30 Brattle sts., 11, 5.

Power—77 Bedford, 11.30, 5.00.

Pratt (Campello)—75 Kilby st., 10 F. H. sq., 10.00, 4.00.

Pratt & Co.—34 Court sq., 48 Kingston st., 11.00, 4.00.

*PRATT & BABB—32 & 34 Court sq., 174 Washington, 8 Fulton st., 12.00, 5 p. m.; 48 Kingston st., 11.30, 4.30.

*PRESSEY—75 Kilby st., 4 Central st., 11, 5.00.

*PRESSON—32 & 34 Court sq., 10.30, 1, 4.30.

*PREVAUX—33 Court sq., 25 Merchants' Row, 2.30, 4.00.

*PRINCE—34 Court sq., 6.00; 7 Bedford st., 5.00.

Prime—33 Court sq., 11.45, 4.00.

Purcell & Fowle—43 N. Market street, twice daily.

Putney & Co.—200 Franklin, 33 Court sq., 11.30, 2.30, 4.00.

*Randall (Rockland)—174 Washington, 91 Kilby sts., 1, 3.30; 34 Court sq., 1, 3.
1653 Razer & Sanborn—91 Kilby st., 1.00, 4.00.
Reed & Co.—33 Ct. sq., 75 Kil., 26 Dev., 7 M. R., 48 King., 2, 4.
Rendell & Howard—75 Kilby, 11, 4.30; 17, 27 & 31 N. Mkt.
*Richardson (Stoneham)—34 Ct. sq., 174 Washington st., 200 Franklin st., 11, 2.00, 5.00; 27 N. Market st.
Richardson Bros.—75 Kilby, 159 Franklin, 49 North Market, 91 Causeway sts., 3.00.
Riley—36 Court sq., 3.00.
Robbins—91 Kilby, 45 No. Market sts., 3.00.
Roberts—34 Court sq., 3.00.
*Robinson—34 & 35 Court sq., 91 Kilby, 48 Kingston, 2.
Rollins (Cambridgeport)—36 Ct. sq., 37 & 39 Q. Mkt., 11, 5.
Rollins (Mattapan)—36 Court sq., 25 Merchants' Row, 3.
Rollins (W. Newbury)—91 Kilby st., 90 High st., 2.00.
*Russell & Co.—34 Court sq., 77 Bedford st., 11.15, 4.15; 75 Kilby st., 60 Pearl st.
*Ryan & Co.—34 & 36 Court sq., 91 Kilby, 200 Franklin, 48 Kingston, 174 Washington, 25 Merch. Row, 11, 4.
Sargent—33 Court sq., 11.00, 4.30.
Saunders & Son—91 Kilby, 34 C't sq., 20 S. Market st., 1.
*Savage & Son—33 & 34 Court sq., 174 Washington st., 200 Franklin, 75 Kilby st., 48 Kingston st., 11, 5.00.
*Savory & Co.—32 & 34 Court sq., 12.30, 2.30, 5.30.
*Sawin—34 Court sq., 11.30, 5.30; 200 Frank., 174 Wash., 75 Kilby, 48 Kingston sts., 11.00, 5.00.
*Seaver—37 Broad st., 40 School st., 2 Tremont Row, Union Market, 119 Federal st., 11, 5.00.
Shaughnessy—31 No. Market, 9.00, 12.30, 5.00.
Shaw (Medford)—27 No. Market street, 3.30.
Simonds (So. Braintree)—91 Kilby st., 2.00.
Simonds C. J. (So. End)—7 Merchants' Row, 159 Washington st., 7.30, 10.20, 11.30, 3.30, 4.30, 5.30.
Skillings—25 Merchants' Row, 36 Court square, 10.00 a. m., 4.00 p. m.; 77 Bedford, 11, 5.00.
Skinner—15 Devonshire, 3; 6 So. Market st., 10 F. H. Sq.
Smith (Brookline)—75 Kilby st., 48 Kingston st., 26 Devonshire st., 27 N. Market st., 3.00.
Smith & Co. (Charlestown)—33 Court sq., 174 Washington street, 11, 5.00.
Smith, D. (Exeter)—32 Court sq., 11.30, 3.00, 4.00.
Smith, H. C. (Manchester)—32, 34 Court sq., 1.00, 4.00.
*Smith & Co. (Fitchburg)—91 Kil., 4; 9 N. Mkt. st., 4.30.
Smith, N. C. (Newmarket)—33 Ct. sq., 200 Frank., 2.30, 4.30.
Smirh & Welch—25 Merch. Row, 7, 8, 9, 11, 1, 3, 4, 5.
Smith (Medford)—33 Court sq., 2; 75 Kilby, 58 F. H. Mkt.
Somes—10 F. H. sq., 11, 5; 184 Congress, 127 Federal sts.
Soule—77 Bedford st., 11, 5; 10 F. H. square, 11.00, 4.00.
Spooner—33 Court sq., 2; 43 N. Market st.
Stack—7 Merchants' Row, 11, 5.00.

Stilphen & Co.—30 Brattle, 77 Bedford, 11, 4.00; 33 & 36 Court sq., 1, 5; 118 Blackstone.

*STONE—33 Court sq., 11, 4.

Stout—118 Blackstone street, 5.00 p. m.

Swett—75 Kil., 6; 26 Dev., 3, 5; 209 Frank., 5; 48 King., 4.

Tainter, E.—200 Franklin st., 27 No. Market st., 2.00.

Tarbox—7 Merchants' Row, 11.00, 5.00.

Taylor (Woburn)—34 Ct. sq., 25 Mer. R., 48 King., 2.30.

Tenny—32 Ct. Sq., 12, 15, 2.30, 4.15; 75 Kilby, 200 Franklin, 2, 3.30; 47 High., 2, 2.30, 4; 25 Merch. Row, 10, 2, 4.

1654 Tewksbury—26 Devonshire, 200 Franklin, 12.00, 5.00; 43 N. Market, 12.00, 5.00; 10 F. H. sq.

Thayer—174 Washington st., 91 Kilby st., 11, 2.00.

Thompson Bros.—75 Kilby st., 3.00; 31 F. H. sq.

*THORPE—4 Cent., 11, 4.30; 110 Union, 1 Blackstone sts.

Thurston—174 Wash. st., 34 Court sq., 3.00.

Towle—7 Mer. Row, 92 Sudbury, 22 Union sts., 5.00.

Townsend—32 Court square, 2.00 p. m.

Tracy—174 Washington st., 9, 1.00, 4.

Traders—48 Kingston st., 11, 4.30; 91 Kilby st., 10.30, 4.

Trask (Gloucester)—91 Kilby, 1, 4; 200 Frank., 12.30, 3.40.

Trowbridge—200 Franklin st., 34 Court sq., 11, 5.

Twombly—10 F. H. sq., 11, 5; 120 Blackstone st.

Tucker—17 Clinton st., 3; 31 N. Market, 115 High sts.

*UNITED STATES AND CANADA EXPRESS—39 & 40 Court sq., 6.15, 11.15 a. m., 1.45, 4.45 p. m. for towns on Concord R. R.; at 6.15 a. m. and 4.45 p. m. for towns on Northern R. R., Pass., Vt. & Canada R. R., Ogdensburg and Boston, Concord, Montreal; 6.15 a. m. for towns on Central Vermont and Passumpsic River R. R.; also, 6.15, 11.15 a. m., 4.45 p. m., B., C. & M. R. R., to Plymouth. 11.15 a. m., 2.15 p. m., Petersboro' & Hillsboro' R. R., and at 6.15 a. m. for towns on Fitchburg, Vermont & Mass., Troy & Greenfield; also, 6.15 for towns on Cheshire, Monadnock, Sullivan, Rutland & Burlington railroads, Saratoga Springs, &c., &c. Also leave at 10.15 a. m. for towns on Fitchburg, Worcester & Nashua, Fitchburg & Worcester, Vt. & Mass., to Greenfield. At 2.15 p. m. for Cheshire, Monadnock, Sullivan, and Rutland & Burlington R. R.'s. At 2.15, Vermont & Mass., Troy & Greenfield. At 1.15, 4.30 p. m., for Fitchburg and stations on Boston, Clinton & Fitchb'g R. R. At 3.45 p. m. for places on Fitchburg, Fitchburg and Worcester, and Worcester & Nashua. At 5.15 p. m., for towns on Cheshire, Vt. & Mass., and Troy & Greenfield R. R.'s. 77 Bedford st., 11.15, 1.15, 1.45, 3, 4.30, 4.45, 6.00; also, agents for National Ex Co.

*VANCE—174 Washington, 1.00, 3.30; 62 High., 92 Bedford.

Wadsworth—95 Kilby st., 1 Merchants' Row, 2.00.

*WALKER—200 Frank., 11, 5; 25 Merch. Row, 12.00, 5.00.

Warner—36 Court sq., 1.00; cellar F. H. Market, 2.00.

Wardle—33 Court sq., 4.00.

Webb—26 Devonshire st., 11.00, 4.00.

WEBSTER (S. Boston)—48 Kingston, 4 Central, 11, 5.

Weeks & Co.—174 Washington st., 11, 1.00, 4.

*Weeks & Kent—34 Court sq., 11, 4.30; 48 Kingston st.

Welch—17 N. Market.

*Wells—32 & 34 Ct. sq., 2.00, 4.00; 200 Frank., 1.15; 3.15.

Wells, Fargo & Co., California & European Express & Exchange Co.—244 Washington st., overland to California, Oregon, and all the Territories daily.

Steamers leave New York for California, Kingston, Aspinwall, Panama, South and Cen. America the 10th, 20th, and 30th of each month. Goods must be delivered two days previous. Steamers for China, Japan, Sandwich Islands, and Australia leave San Francisco the 1st of each month; for England, Ireland, Scotland, and all parts of Europe by all S. S. lines. Express every day from Boston to connect with outward steamers at New York.

Wentworth—91 Kilby st., 60 Union st., 2.30.

*Weston—34 Court sq., 25 Merchants' Row, 91 Kilby, 200 Franklin, 7.30, 3.30; 77 Bedford, 7.30, 4.

Whall—91 Kilby st., 34 Court sq., 12.00, 2, 4.00 p. m.

*Wheeler & Co.—33 Court sq., 1.30, 4; 48 Kingston st., 3.30; 57 High st.

1655 White—36 Court sq., 2.30; 91 Kilby st., 27 N. Market st.

Whitney (Norwood)—174 Washington street, 1.30 p. m.

Whitney Bros. (Malden)—36 Court sq., 75 & 91 Kilby st., 7 Mer. Row, 26 Devonshire, 43 No. Market sts., 3.00.

Wilcomb—32 Court sq., 2, 4.15; 200 Franklin, 1.30, 3.30.

Willett & Harris—33 Court sq., 7 Merchants' Row, 2, 4.

Williams & Co. (Foreign)—200 Franklin st., every steamer from New York.

Williams—34 Court sq., 200 Franklin st., 3.00.

Willis & Beal—10 F. H. sq., Cellar 2 F. H. M'k't, 77 Bedford, West End, 9.30, 10.30, 1, 3.30, 5.30; So. End hourly.

Winn (Winthrop)—34 Court sq., 3; 25 Merchants' Row, 58 Commercial st.

*Winn, W. N. (Arlington)—33 Court sq., 2; 39 F. H. Market.

Winn (Winchester)—34 Court sq., 2, 3; 174 Washington, 2.30; 91 Kilby, 200 Franklin sts., 2.00.

*Winslow (Westboro')—34 Court sq., 200 Franklin, 11.

Winslow (Walpole)—174 Washington street, 12.00.

Winslow (Quincy)—34 Court sq., 10, 3; 75 Kilby st., 11.00, 3; 200 Franklin, 11.15, 3.15; 77 Bedford st., 11.30, 3.30; 10 F. Hall sq., 11.00, 3.00.

Winthrop Ex. Co.—36 Court sq., 154 Com'rc'l, 96 Blackstone sts., 2.

*Withington—33, 34, & 36 Court sq., 174 Wash. st., 11, 4.

Woodbridge—25 Merchants' Row, 11.30, 4.30.

Woodsum—174 Washington st., 1, 3; 24 High st.

Wright—26 Devonshire, 1.00.

Yeaton—7 Merchants' Row, 30 Brattle st., 11.45, 5.00.

*Young—75 Kilby, 48 Kingston, 200 Franklin st., 11, 4.

Young (Brighton)—26 Merchants' Row 11.00, 3.00.

Frederick Lovejoy, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by Mr. SEWARD, counsel for complainant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Frederick Lovejoy; I am 46 years old; I reside in Philadelphia; I am superintendent of the Adams Express Company.

Q. 2. How long have you been connected with the Adams Express Company, and in what capacity?

A. Since July, 1855, and as accountant, superintendent; and assistant general superintendent.

Q. 3. Are there other express companies in the United States besides the Adams which are engaged in the same kind of business as the Adams?

A. There are.

1656 Q. 4. Please mention the names of the more prominent of such companies.

A. The American, United States, National, United States and Canada, Southern, and various others.

Q. 5. Is there, to your knowledge, a railroad of any prominence in the United States which is not now, and has not been for many years, extending facilities for doing the express business to some express company of some form of organization?

A. There is none that I know of at present.

Q. 6. How long, to your knowledge, has the express business as such been generally conducted over the principal railways of the United States?

A. For the last 25 years to my personal knowledge.

Q. 7. As a general fact, how long is it usually after the construction of a new railway or the extension of the lines of an old one before such new railway or extension of an old one is occupied by some form of an express company?

A. The line is generally occupied as soon as regular passenger lines are put on to run, either on extensions or new lines.

Q. 8. Do these express companies usually run between one or more States?

A. They do.

Q. 9. Are the general shipments by the Adams Express destined from a point in one State to a point in another State?

A. A very large proportion of them are.

Q. 10. What is meant by the word "express," as applied to inter-State transportation?

A. It means to give the greatest possible dispatch between the points of shipment and destination.

Q. 11. In effecting such transportation, what instrumentalities have been, during this 25 years, habitually used by the express companies?

A. The quickest method of transit, which has been generally railway companies.

Q. 12. By what trains have the railway companies been
1657 in the habit of transporting express matter and affording facilities therefor?

A. As a rule, by the fastest express passenger trains, and, in some instances, by special trains, which run faster than the passenger trains.

Q. 13. What is included in the phrase express facilities, or facilities for doing the express business, as these phrases have been practically interpreted by the railway companies?

A. The use of the various stations for handling the freight to and from the cars and room in the depot for storage in case it is required, the furnishing of the necessary cars for transporting the matter offered, the carrying the officers and employés of the company.

Q. 14. Are whole cars always assigned for the express business?

A. Not always; but it is generally understood or agreed that the necessary space shall be provided either in the baggage cars or by special cars, as the volume of business demands.

Q. 15. How frequently does it occur that a whole car assigned for use for the express business constitutes a portion of an express passenger train?

A. On the trunk lines and principal railroads almost invariably; on the branch roads and smaller lines not very often.

Q. 16. Does the use of a portion of the baggage car or of a whole car for the express business in a passenger train constantly and habitually so retard the movement of the passenger trains that they can not conform to their published schedule time?

A. The occupancy of a baggage car, a portion of which is usually used for the baggage of the passengers, does not retard the movement of the trains or interfere with the business of the railroad company, since the car would have to be run for the baggage if there were no express matter; where a special car is provided it might prevent the making of schedule time in the case of extra heavy trains; but with the improvements in the motive power of late this is rarely the case.

1658 Q. 17. Has the Adams Express business arrangements with other express companies for an interchange of express matter whereby such matter can be forwarded to destination at points not reached by the Adams?

A. It has.

Q. 18. Is there any principal city, town, or village between the Lakes and the St. Lawrence and the Gulf of Mexico, and the Atlantic and Pacific Oceans, in the United States, which is not reached by the lines of some express company?

A. There may be a few villages; but very few.

Q. 19. When the Adams Express receives property for shipment does it, or does it not, give the shipper a receipt covering the transportation to the place of destination, or so far as the lines of the Adams run?

A. It gives a receipt to destination.

Q. 20. Does it, or not, frequently—and, if so, in general terms how frequently—occur that property is received, for illustration, at New York or Philadelphia, which, by the usual course of transportation, will pass through several States and over the lines of several independent railway companies before reaching destination?

A. I should say that at least one-half of our business goes over more than one railroad and passes from one State to another, sometimes through three or four States.

Q. 21. Does the Adams extend from New York to St. Louis?

A. It does.

Q. 22. Through how many States and over how many lines of railway will a package pass going between those two cities?

A. It will pass through New York, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, and Missouri; first, by boat; then over the united railroads of New Jersey; the Pennsylvania railroad; Pittsburg, Cincinnati & St. Louis railway; C., C. & I. C. R. R.; Indianapolis & Terre Haute; Terre Haute & Vandalia, and Vandalia & St. Louis.

Adjourned to August 25, 1880, at 11 a. m.

1659 NEW YORK, *August* 26, 1880—10 A. M.

Present: Counsel, as before.

Examination of the witness LOVEJOY resumed.

Q. 23. Please look at section 7 of the act of Congress of June 10, 1880, and state whether the Adams Express Company's lines extend between any—and, if so, which—of the places in said section named.

A. They extend to New York, Boston, Providence, Newport, New Haven, Hartford, Middletown, Philadelphia, Pittsburg, Baltimore, Crisfield, Annapolis, Wilmington, Seaford, Georgetown, D. C., Richmond, Va., Chicago, Cairo, Ill., St. Louis, Cincinnati, Cleveland, Louisville, Evansville, Ind.

Q. 24. In what division of the Adams Express, if any, are you the superintendent?

A. The Pennsylvania Division, also of the Central Express and New Jersey Express—three separate divisions.

Q. 25. Is there a division south of Pennsylvania?

A. There is the Baltimore Division.

Q. 26. Are you generally familiar with the lines of railway over which the Adams Express runs in such latter division?

A. I am.

Q. 27. Will you please state the names of each railroad in your divisions and the Baltimore Division over which the Adams Express runs, and the amount or rate of compensation which such express company pays for express facilities on such railroads?

A. In the Pennsylvania Division, first the Pennsylvania railroad from Philadelphia to Pittsburg, 355 miles, on that we pay 40 per cent. on gross receipts. Donningtown Branch, 28 miles; Lewiston Branch 13 miles; Tyrone and Lockhaven, 55 miles; Tyrone and Kerwansville, 41 miles; Altoona and Hollidaysburg, 28 miles; Hollidaysburg and Williamsburg, 14 miles; Hollidaysburg and Neury, 4 miles; Cresson and Ebensburg, 11 miles; Blairsville and Idiana, 19 miles;

Blairsville and Alleghany Junction, 38 miles; Southwest Penn-
1660 sylvania, from Pittsburg to Olyphant, 73 miles; Columbia and
York, 12 miles; York and Frederick, 42 miles—these are under the 40 per cent. arrangement. The Northern Central railroad from Baltimore to Sunbury and from Williamsport to Elmira, 316 miles: the Hanover Junction, Hanover and Gettysburg road, 30 miles; the Hanover Junction and Eastern Berlin railroad, 10 miles; Lykens Valley branch, 12 miles; Shanakin branch, 28 miles; Lewisburg branch, 43 miles—these are also in the 40 per cent. arrangement. Cumberland Valley railroad, Harrisburg to Martinsburg, 82 miles; South Pennsylvania branch, 28 miles—on the 40 per cent. arrangement. The Philadelphia and Erie railroad, from Sunbury to Williamsport, 40 miles; Low Grade Division of Alleghany Valley railroad, 110 miles; Chambersburg and Waynesburg, 21 miles; Lewistown and Sunbury, 50 miles; Carlisle to Pine Grove, 18 miles; Mechanicsburg to Baling Springs, 16 miles—these are all on the 40 per cent basis. Philadelphia, Wilmington and Baltimore railroad, 100 miles; Perrysville branch, 4 miles—on these roads the contract is 33 cents per 100 pounds on the first 40,000 pounds daily, 25 cents per 100 pounds on all in excess of 40,000 pounds, local freights to be charged for at half the rates of through freights. The Delaware railroad, from Philadelphia to Cresfield, 163 miles—on that road we pay 60 cents per 100 pounds the entire length of the road on miscellaneous matter or merchandise, and on produce or oysters 46 cents per 100 pounds; the local rates are varied from time to time, but are based on the figures of 25 cents per 100 pounds for the shortest distance, and at the rate of 33½ cents per 100 pounds for 100 miles, when the distance carried at that rate produces a greater sum than 25 cents. Kent County railroad, 36 miles, 19 cents per 100 pounds. Queen Ann and Kent County railroad, 36 miles, 20 cents per 100 pounds. Maryland and Delaware railroad, 44 miles, 25 cents per 100 pounds. Junction and Breakwater, $100 per month. Wickamaico and Pochomoico railroad, 23 miles, 20 cents per hundred. Wilmington and Reading railroad, from Wilmington to Reading, on local matter, one and a half times first-class freight rates; on through matter, or that
which originates off the line of the railroad going to a
1661 point on the road, or originating on the road and destined to
a point beyond the line of this road, we pay first-class freight rates; between Coatesville and Reading, a distance of 34 miles, we pay 12 cents per hundred. In Central Express division, Central railroad, of New Jersey, from New York to Easton, 74 miles, local matter carried 20 miles or less, 15 cents per hundred pounds; 20 to 50 miles, 25 cents per hundred pounds; over 50 miles, 33 cents; between New York and Easton, and for matter going beyond Easton over the entire road, we pay on merchandioe 25 cents; on produce and oysters, 20 cents. Long Branch division, New York to Seagirt, on merchandise, 25 cents; on produce and other heavy freight of a similar character, 20 cents. Lehigh and Susquehanna division, first-class freight rates, with special rates from time to time on butter and other special matter at a reduction of about 25 per cent. on

the merchandise rates; for messengers and their safes and P. P. trunks, $10 per day. This latter sum is for the main line and all its branches. Lehigh Valley railroad, local freight from station to station, once and a quarter first-class freight rate; from Sayra to New York, 294 miles, $1 per 100 on merchandise, 70 cents per 100 on butter and produce; special rates on oysters and produce to and from the principal points on the road, first-class freight rates. North Pennsylvania railroad, Philadelphia to Bethlehem, 55 miles, local freight, 19 cents per 100 pounds; through freight, 20 cents per 100 pounds; messengers, with safes and trunks, $3 per day. Belvidere Delaware railroad, from Trenton to Belvidere, 65 miles, 40 per cent. of the gross receipts. Sullivan and Erie railroad, Towando to Bernice. 29 miles, first-class freight rates. Sunbury and Hazleton railroad, 44 miles, 40 per cent. of the gross receipts. New Jersey express division, New Jersey and Southern railroad and branches, about 160 miles, 33⅓ per cent. of the gross receipts. United New Jersey railroads and branches, about 300 miles, 40 per cent. of the gross receipts. The thirteen different roads in the Baltimore division, I cannot give the rates paid, as I have not the data before me.

1662 Q. 28. I observe from testimony that the agreements between the Adams and the various railroads mentioned seem to arrange themselves into three classes, namely: Where compensation is made upon a percentage basis, for space accorded, and by weight. By whom and upon what consideration is the question determined as to which method of compensation shall be adopted in any given case?

A. The terms are generally arranged between the contracting parties, and, so far as my experience, the form of the contract is generally suggested by the express company, and until recent date the 100 pound contract, or space contract, as the nature of the business required, was the form adopted. Latterly it has been considered by both contracting parties that a percentage contract was the more equitable, as the nature of the business has considerably changed in the past few years.

Q. 29. In determining what would be a just and reasonable compensation to be paid by an express company to a railway company for express facilities, what circumstances are taken into consideration?

A. If the contract is per 100 pounds it is generally considered that 25 cents per 100 pounds per 100 miles on through matter, or matter carried over 100 miles, is a fair compensation, except in cases where the express company in question has strong competitors by rival lines, when the rate is oftentimes made as low as 20 cents per 100 pounds per 100 miles. On local matter, carried distances less than 100 miles, it is generally considered that a rate based at 33⅓ cents per 100 pounds per 100 miles is fair, excepting in cases of very short roads, or branch roads under 50 miles, when the rate is fixed at from 15 to 20 cents per 100 pounds, as a rule. In cases where a specific price is paid for a given space in the baggage cars, or for whole cars when required, the calculation is made as to the weight that can be carried in the amount of space asked for, and this is cal-

culated upon at the rate of 25 or 33⅓ cents per hundred pounds per hundred miles, as the case may be, through or local, which will produce the sum proposed to be paid. In the case of a percentage contract, there are various questions which govern, as follows: First. The relative proportion of gross receipts from money and col-
1663 lection business. Second. The proportion of receipts derived from the carrying of small parcels and light and valuable freight. Third. The length of road over which the freight is to be transported.

Q. 30. Have you ever made a computation to ascertain what was the average per cent. of the Adams Express Company's receipts paid to the railway companies for express facilities thereon.

A. I have had it made.

Q. 31. And with what result?

A. For a period of ten years on our business as a whole the lowest per cent. for any one year was a fraction over thirty-one per cent., and the highest was a fraction over forty-one per cent. I think the average was about thirty-six per cent. I am not positive, but I think it was within a fraction of that figure.

Q. 32. State, having reference to packages and valuables (excluding money), how the transportation thereof is actually and practically conducted by the Adams Express Company.

A. All small parcels and what are termed paper parcels are packed in large trunks provided for that purpose as a means of protecting the parcels and expediting the trans-shipments from one road to another when required. These trunks are locked and sealed, and forwarded to destination without being opened by either [messengers], or the railroad officials. In this manner we send all this class of business between all the prominent cities and towns reached by our lines, or those of other express companies with which we have arrangements for billing through.

Q. 33. State in detail the various classes of service rendered by the Adams Express Company in the transportation of moneys, securities, national bank notes, and all other valuable matter for the Government of the United States, and the details of all the various steps necessary in the rendition of the same.

A. First, we carry the bank notes for the Government from the Treasury Department at Washington to their various sub-
1664 treasuries. Second, we transport all the national bank notes from the Department at Washington to the various national banks throughout the United States, giving our receipt through to destination under an agreement made with the other responsible express companies. In like manner we transport the mutilated notes from the various national banks throughout the United States to Washington for redemption. We transport the moneys collected by the various revenue collectors to their designated repositories, giving our receipt in duplicate for these amounts, one of which we retain, indorsed by the collector, as our voucher for the service performed, taking a receipt from the repository, which, with the vouchers just alluded to, are sent to Washington, and on which we receive our compensation. We make the transfer of large amounts of notes

and coin between the mints and the sub-treasuries and the Department at Washington. These transfer orders are made payable to the order of our company, and on presentation of the order, properly indorsed by our company, the money is delivered to us for transportation. As an illustration, we are now transporting, under one of these orders issued at Washington, $25,000,000 in gold from the sub-treasury in New York to the mint in Philadelphia. We also transport all the coin from the mint at Philadelphia to the national banks throughout the United States. We also transport all the internal revenue stamps and other Government stamps, and various incomplete securities, and some other forms of collection which I cannot call to mind at this time.

Q. 34. Does the Government ever employ the Adams to transfer money from one sub-treasury to another; and, if it does, how frequently; and state in particular detail precisely how such transfer is effected?

A. It does. I can't say just how frequently; it varies in accordance with the requirements of the Government. The Department delivers the order to our agent in Washington—a draft or order to the order of the Adams Express Co.—and by our agent there it is forwarded to the point at which the order is payable. The draft or order is indorsed by our company, and on such indorsement the money is delivered to our company to transport to the point to which it is ordered by the Department, such point being designated
1665 in the original order. The shipment is accompanied by a voucher from the sub-treasury shipping, which we have signed by the party receiving, and return to the Department.

Q. 35. Does the same transaction occur between sub-treasurers and depositaries, and *vice versa*.

A. It does; all the designated depositaries.

Q. 36. Please name the more important points between which such transfers are effected under Government orders.

A. Boston, New York, Philadelphia, Washington, Charleston, Savannah, New Orleans, Memphis, St. Louis, Chicago, Milwaukee, St. Paul, Cincinnati, Columbus, Cleveland, Detroit, Buffalo, Pittsburg, and various other large cities intermediate the places named, including Louisville.

Q. 37. Are you familiar with the service rendered by the Adams in effecting the redemption of the notes of the national banks?

A. I don't know that I am familiar enough to explain all the detail connected with it.

Q. 38. Do you know to what extent the same has been carried on in any one year?

A. I cannot say positively. I have had the figures before me, but have forgotten.

Q. 39. State in detail what services are rendered by an express company to the public, in addition to the mere transportation of matter upon a railway train from one terminus to another.

A. We have wagons to call for the packages of all descriptions at the door of the consignor, giving our receipts for such parcels at said points through to destination, as a rule. We provide men to travel

over the roads in charge of the shipments, as a protection both against theft and other losses incident to transportation; also careful men at transfer points, and at point of destination we provide the necessary men and wagons for delivering to the consignee's door. We take freight from a shipper here, with a bill representing the value of said shipment, to be collected on delivery of said shipment, issuing our receipt therefor, obligating the company to return the amount of money which the bill calls for or the original pack-
1666 age. We also receive from banks, bankers, and private individuals notes, drafts, and other forms of collection, many of which require protesting, if not paid, and most of which are made payable to the order of our company. We present the notes for payment, and return the proceeds, if paid; if unpaid, and they require protesting, we have that done, returning the documents and protest to the original sender. We transport large amounts of money between the various banks and bankers, and generally act as agents for the public in transporting all classes of securities and making all forms of collections. We carry orders from one city or town to another, delivering the same, and collecting whatever the order may call for, returning the article to the party first employing. We carry goods to foreign places for inspection and purchase or return, and act generally as agents for the transaction of all business similar to the above between all points reached by our own lines and those of other responsible express companies. We transport children between different points in charge of our own messengers, as also all descriptions of live stock, the messengers in charge being instructed to see that such shipments receive the necessary care in watering and feeding. We transport large quantities of oysters from Baltimore and other seaboard points to all points west and southwest. This class of business has assumed very large proportions, so much so that we employ special trains for the service, having carried as many as twenty-five cars per night from Baltimore alone, which would represent about 250 tons. This class of business requires the greatest dispatch, which it invariably receives at our hands. We also transport large quantities of fruit, more particularly peaches, of which we have carried from Baltimore and Philadelphia as many as ten cars per night for points north and west of those cities. This business is also of a very perishable nature, and receives the greatest possible despatch.

Q. 40. Have you any knowledge of any railway company over which the Adams runs transporting for independent shippers on the same trains on which they carry express business any property other than baggage, say, for illustration, boots and shoes, or fruit, or fish, or any other similar article?

1667 A. The Norwich and Worcester line, so-called, which is part boat and part rail, between New York and Boston, carried boots and shoes for the manufacturers east to New York on the same trains and boats that we ran our express on. The Stonington line, which runs from this city to Boston, carries fresh fish on the same trains on which we run our express. The Pennsylvania R. R., under an understanding with our company, have carried many car loads of peaches from Philadelphia to the Western cities by the same trains as our express.

Q. 41. In these latter cases do such independent shippers pay more or less to the railway company than it would receive from the express company if such articles were carried by it?

A. In all the cases I have mentioned they paid less than we paid the railway company for the same service.

Q. 42. Has the express business of the country, as conducted within your experience, been successful?

A. It has.

Q. 43. To what circumstances do you attribute such success?

Adjourned to August 28, 1880, at 10 a. m.

New York, *August* 28, 1880, 10 a. m.

Present: Counsel as before.

Examination of the witness, Lovejoy, continued.

Answer to question 43:

A. For the following reasons: It relieves the consignees and consignors from seeking the carrier, and gave to both a responsible intermediate party as between themselves and the railroads, steamboats, and stage companies. It gave to the shippers, for the first time, through bills of lading of a responsible party, which covered the shipments through as many different States and over as many different lines as the articles were forwarded. It advised the shipper that its property would be under personal supervision of the employes of the company throughout the entire distance. In cases of live stock and perishable matter it undertook to secure the
1668 attention which such property requires. It adopted the
policy, which has been strictly adhered to, of making prompt settlements in all cases of losses. It introduced a new commission agency which was much needed, extending through its various agencies, and meeting the requirements of all this class of business. It inaugurated a system of collecting notes, drafts, and all other classes of commercial paper between all the important cities and towns, as also all the smaller places where there were no banks or other institutions for such purposes. It provided trusty messengers, iron safes, and every other protection possible for the carriage of money and other valuable property. It furnished, at much expense, the most expeditious mode of doing all the business referred to, and which has not been equaled by any other method up to the present time; and, generally, it supplied the wants of the public in the most satisfactory manner.

Q. 44. You have spoken of the service rendered by the Adams Express Company in the matter of the redemption of national bank notes. Will you please state in detail precisely how such service is rendered?

A. Under the redemption act all national banks are required to redeem their notes at Washington, and each national bank is required to deposit in the Treasury at Washington a sum equal to five per cent. of its circulation in legal-tender notes. As an illus-

tration of the process of redemption, a bank in the city has $100,000 in the notes of the various national banks throughout the United States. These notes are put in a package and addressed to the Treasurer of the United States, at Washington, the amount marked thereon, with the indorsement, "National Bank Notes for Redemption." The package is delivered to our company, we issuing our receipt for the same, and transporting it to Washington. On the reception of the package at the Treasury Department they return, through our express, to the bank in this city $100,000 in legal-tender notes. After the reception of the national bank notes at Washington they are assorted and placed in packages, in separate packages, in accordance with the bank of issue. As an illustration, we will
say that this $100,000 was made up of the notes amounting
1669 to $1,000 each, of 100 different national banks. The Depart-
ment examines the notes of each of these banks, and in cases where they are mutilated to the extent of being unfit for further circulation they substitute new notes for the mutilated ones. Then each of these 100 packages of $1,000 each are directed to their respective banks of issue, and delivered to our company to be forwarded to the points where the banks are located, our company issuing its receipt to the Department for each of these packages. After the reception of these packages by the various banks of issue they are required to return to the Treasury at Washington, through our express, an equal sum in legal-tender notes to make good their five per cent. deposit at Washington.

Q. 45. Are there any express companies engaged in the conduct of the express business between the United States and Europe, and Cuba, and the principal islands adjacent to the American coast and the Brazils; and if so, will you please give in your answer a list thereof?

A. There are a number. The following are the names:

FOREIGN EXPRESSES.

American European Express.—(Baldwin Bros.,) office, 72 Broadway.

American Foreign and General Foreign Express.—(Davies & Co.,) office, 42 Broadway.

Contanseau's Rapid Transit Express Co., 128 Broadway.

Davies & Co., General Foreign and European Express Co., 42 Broadway.

E. Clarke & Co., International Express, 2 Beaver Street.

European and Foreign Express.—(P. Ronzone,) 51 Broadway.

European (Morris') Express.—L. W. Morris, 50 Broadway.

European.—(Wells, Fargo & Co.,) 65 Broadway.

Foreign.—(Dunlop's) Agency, 63 Broadway.

Havana and West Indian.—(Carrington & Co.) Agency, 3 Bowling Green.

Key West and St. Thomas Express.—30 Burling Slip.

Havre Fast Freight Express to Europe.—50 Broadway.

L. Contanseau, General European Express.—128 Broadway.

New York and Brazil Express Co.—Office, 30 Burling Slip. Philadelphia office, 265 South 4th street.

Ocean and Anglo-American.—(Losee & Co.,) 69 Broadway.

The T. K. European Express Co.—49 Broadway.

Transatlantic Forwarding Agency.—(J. Terkule,) 49 Broadway.

West Indian and Brazilian.—(Carrington & Co.,) 3 Bowling Green.

1670 Q. You have stated that in later times an arrangement between the express companies, based upon a percentage division of earnings, was considered to be fairer than a space or weight arrangement. Why is a percentage basis more fair to the railroad than the other two methods of compensation?

A. Because it enables the railroad to participate in the receipts derived from the transportation of small parcels and bulky matter which is charged for by measurement, and also the receipts derived from the carriage of money and other valuable matter, and collection business. As an illustration, supposing the express company had one hundred different parcels going from New York to Cincinnati, weighing an average of one pound each, for which the express company would charge thirty cents each, making a total charge of thirty dollars on the hundred packages. Under a percentage contract the railroad would get its full share of this sum, whereas under a contract by the hundred pounds, or by space, they would receive but a very small proportion of the gross sum. The same argument would apply to the money and collection business, but in a greater degree, so far as the revenue to the railroad company is concerned.

Q. 47. In cases where the express matter occupies only a portion of a car, where does the express messenger habitually ride?

A. In the portion of the car which is assigned to the express business, with the freight and other express matter.

Q. 48. In what car is this?

A. In the baggage car.

Q. 49. Who else usually goes in such car?

A. The baggage-master employed by the railroad company.

Q. 50. What else is carried in such car besides the express matter?

A. The baggage of the passengers, which the railroad company checks.

Q. 51. Is any railroad property ever carried in such car, of any kind?

A. The supplies of the railroad company are very often carried, and in some cases, as previously stated by me, merchandise,
1671 and fresh fish, and other matter is carried by the railroad companies.

Q. 52. Do cases ever occur in which the baggage-master on a passenger train is also employed as an express agent thereon, or an express agent is employed as a baggage man?

A. Very often this occurs.

Q. 53. Since you have been connected with the express business has any complaint ever been made to you, by any railroad company, that it was unsafe and dangerous, so far as passenger's baggage and railroad property were concerned, to have or permit an express messenger to ride in the baggage car?

A. Never that I recollect of; but, on the contrary, it has generally been considered, both by the railroad companies and ourselves, that it was an advantage, in point of security, to have the two men in the same car. It is our invariable rule to put our messengers, with their safes and valuables, in the through baggage cars running between New York and Washing for reasons above stated.

Q. 54. Does it ever—and, if so, how frequently—occur that the United States mails are carried in charge of route agents in a portion of a baggage car?

A. It is the general custom on all roads, except those which are termed trunk lines.

Q. 55. Did you ever hear of a case in which a railway complained that it was detrimental or injurious to the care and custody of the property committed to their care to have a mail agent occupy any portion of a baggage car?

A. I never did.

Q. 56. About what size, in feet and inches, is the usual car safe used by the Adams?

A. They are about twenty inches deep by twenty inches wide, and from twenty to thirty-six inches long. They weigh, I should think, not far from one hundred pounds.

Q. 57. You have stated that the express company carry the small packages, and those of value in trunks. How frequently are such car safes and trunks employed in your division?

1672 A. The safes are employed in every case where a messenger runs over the road, and the trunks are employed in the same manner, except on some of the very short branches. This carries the trunks invariably, once a day, each way, and, in some cases, as frequently as five or six times per day in each direction.

Q. 58. Has it ever been the usage, habit, or custom of the railway companies to inspect the contents of these safes and trunks?

A. Never in my experience.

Q. 59. Have you personally ever been requested by any railroad company to acknowledge the right of the railway company to make inspection of these safes and trunks going forwards and backwards daily in your division?

A. I have not.

Q. 60. So far as you know, has any such claim been made by the railway companies whose lines are occupied by other express companies than the Adams?

A. Not of my personal knowledge.

Q. 61. In what form generally are the moneys carried by the Adams on the transfer orders of the United States Treasury?

A. Generally in bank notes, and sometimes in gold or silver.

Q. 62 Can you state in the case of bank notes to what extent in amount you have known such individual transfer orders to reach?

A. The highest amount I now recollect in bank notes is 1,000,000 dollars, from New York to Washington.

Q. 63. You are not personally familiar, are you, with the transfer orders outside of your own division—that is, between Boston and St. Louis?

A. I am not.

Q. 64. The 1,000,000 dollars to which you have alluded went in a ferry-boat from New York to Jersey City, did it not, and thence to Washington by three different railway lines?

A. It went from New York to Jersey City by ferry-boat, and from Jersey City to Washington it passed over five different rail-
1673 roads: The United railroads of New Jersey, from New York to West Philadelphia; the Junction railroad from West Philadelphia to Gray's Ferry; over the Philadelphia, Wilmington and Baltimore railroad, from Gray's Ferry to Bayview; from Bayview to Charles street, in Baltimore, over the Union railroad; from Charles street, Baltimore, to Washington by the Baltimore and Potomac railroad.

Q. 65. As a matter of fact, would it have conduced to the safety of that 1,000,000 dollars, if before it was permitted to go upon the ferry-boat and railroads, the captain of the ferry-boat, and five different railroad baggage men had severally claimed and exercised the right to inspect such 1,000,000 of dollars in bank notes?

A. It would not have been conducive of safety, but, on the contrary, involved risks which a responsible company would not have been willing to assume.

Q. 66. Would not each one of those five counts by the steamboat and railroad officials have occupied a certain amount of time depending upon the denomination of the bills of which said 1,000,000 dollars was composed?

A. It would.

Q. 67. Would it be possible to conduct the express business of the country and to move the moneys of the Government and of the public if any such right of inspection were habitually enforced by the railway, steamboat, and stage companies of the United States?

A. It would be utterly impossible.

Q. 68. Has the Adams Express Company, or, so far as you know, has any other express company, ever claimed to have a right to break open, adversely to the wishes of the shipper, a package shipped by him, or refused to carry it unless it could inspect its contents?

A. Not to my knowledge.

Q. 69. When the Adams Express receives a package of money for transportation at Philadelphia for Pittsburg, Cincinnati, Chicago, St. Louis, or other points, does it not require the shipper, or some one on his behalf, to place the same in an envelope and securely seal the same?

A. It does.

Q. 70. Why?

1674 A. To relieve it of certain responsibilities, such as would be involved in counting the money at the time of its reception, and the performance of a like service at the time of delivery.

Q. 71. Does or does not the Adams require the shipper to use his own seal, when he has one?

A. It does.

Q. 72. Does or does not the Adams rely upon the fact that such seals are unbroken at destination as evidence that the contents of the package have not been tampered with while in the custody of the express company?

A. It does.

Q. 73. If the particular package had crossed from New York in the Jersey City ferry-boat, and the captain of the ferry boat had broken the owner's seals, would it have been possible then and there to replace such seals?

A. It would not have been possible.

Q. 74. If a railroad official en route had broken such seal would it have been possible for him to have replaced such seals?

A. It would not.

Q. 75. Please state for the information of the court whose duty it would be, when a railway company breaks open a safe, trunk, or package, and inspects its contents, to repair the injury done to the envelope of such package to secure such inspection.

A. It would be the duty of the railroad company; but in the event of their failure to do so our own company would have to do so for our own protection.

Q. 76. Could the railway restore the owner's seals?

A. It could not.

Q. 77. Do you know of any case in which an express company has refused to receive the express matter of a connecting express unless it could previously inspect the contents thereof?

A. I do not.

Q. 78. Do you know of any case in which a railroad company refuses to transport the baggage of its passengers unless it can previously inspect the same?

1675 A. I do not.

Q. 79. Do you know of any case in which a railway company habitually charges and receives an extra price for extra baggage?

A. I do not. All the trunk lines have rates which they charge on baggage in excess of a given amount.

Q. 80. Did you ever know the case of a railroad refusing to transport extra baggage, unless it could first examine the contents thereof?

A. I never did.

Q. 81. Do you know of any railroad company in the United States which refuses to the public to transport its goods, wares, and merchandise on a freight train, unless it was accorded a previous inspection of such goods, wares, and merchandise?

A. I do not.

Q. 81*. Is it not the usage of railway companies, for illustration, in the West, to load through freight for New York city in through cars to the extent of their capacity, and then to seal or lock such cars, which so remain until they reach New York city?

A. It is.

Q. 82. Is it not customary to see such sealed or locked cars coming from the West on the various trunk lines converging in New York or Jersey City?

A. It is.

Q. 83. Did you ever know of an intermediate railroad company in such a case refusing to permit such sealed or locked car to pass over its intermediate road, unless it would be permitted first to inspect the contents of such a car?

A. I never did.

Q. 84. Take the case of a draft given to the express company in Boston for collection in and remission from St. Louis; to whose order would such draft be?

A. The order of the Adams Express Co.

Q. 85. Does the express company ever receive for collection drafts, notes, bills, or checques which bear at such time one or more antecedent indorsements?

A. It does.

1676 Q. 86. Do the banks or parties upon whom such drafts, bills, or checques are drawn pay the same upon presentation, or do they require any—and, if so, what—act by the Adams Co. before collection?

A. They require the Adams Express Co. to indorse such notes, drafts, or checques.

Cross-examination by Mr. Barnett:

Cross-Q. 87. How long have you been assistant superintendent in the Adams Express Co., and define the boundaries of the "Pennsylvania division."

A. I never was assistant superintendent. I was superintendent from 1857 to 1865, and assistant general superintendent from 1865 to 1876. Since the latter date I have been superintendent of the Pennsylvania Central and New Jersey divisions. The boundary lines of these divisions are as follows: From New York on the north to Baltimore on the south, embracing all lines in the States of New Jersey and Delaware; Pittsburg on the west, and up to the line of the Erie road on the north.

Cross-Q. 88. With how many railroad companies in these divisions has the Adams Express Co. written contracts for carrying on its business, and will you exhibit such contracts, or copies thereof, for the inspection of court and counsel, and as part of your answer to this question?

A. I don't think we have a written contract with any of the roads. The agreements have been made from time to time verbally, except in the case of the Philadelphia, Wilmington and Baltimore, which was by letter, a copy of which I herewith submit.

Cross-Q. 89. Has or not the Adams Express Company a written contract for doing its business on the Pennsylvania railroad and all the lines controlled by it?

A. It has not.

Cross-Q. 90. How long since it ceased to have?

A. I think the last written contract with that company was executed some 15 years ago. There was a modification of the contract indorsed thereon in, I think, the year 1867. That was when we were under 100-pound contract.

1677 Cross-Q. 91. Are the terms of that contract, as thus modified, yet observed by the parties thereto in the transaction of the business?

A. They are not.

Cross-Q. 92. What principal railroad companies, if any, control and regulate the other lesser lines within your division?

A. The Pennsylvania railroad controls many of the lesser lines, and the New Jersey Central, the Philadelphia, Wilmington and Baltimore controls the Delaware railroad interest. I suppose there are 8 or 10 independent lines in this division not controlled by these three just named.

Cross-Q. 93. Be so good as to state the terms and conditions upon which express facilities are furnished to the Adams Company by these three principal companies, except as to the matter of compensation, which I believe you have already stated.

A. The railroad companies are to furnish us the requisite facilities for prompt movement by their passenger trains, either in their baggage cars or by special cars, of all our freights, and at such times as the interest of our business requires, carrying our messengers and officers over their respective lines, and at rates which have been heretofore named by me, the express company agreeing to assume all risk incident to such transportation, of whatsoever character. The express company to make returns at the end of each month of the weights carried, or of the gross receipts carried on the respective lines as understood between the parties.

Cross-Q. 94. Do your contracts or arrangements with these companies allow the railroad company to carry by its passenger trains freight or express matter, or allow their conductors or baggage-masters or other employés to carry such matter on passenger trains, and do such contracts or arrangements also provide that all express matter seeking transportation by passenger trains, except the baggage of passengers on the train, shall be considered express matter, and turned over to the messenger?

A. The general understanding is that all matter sent by pas-
1678 senger trains, except the personal baggage of the passengers,
shall be considered as express matter, but by a subsequent agreement with the Pennsylvania railroad they have carried fruit in car-load lots on the same trains on which our express was carried. for which they receive the revenue. This has also been the case in forwarding some special matter from the West to the East in car-load lots.

Cross-Q. 95. Does your contract or arrangement with either of the three principal railway companies allow said companies, or any other person or company, to carry express matter in the same baggage or express car or on the same passenger train as that used by the Adams Express Company?

A. It does, if the persons or company comply with the same terms and conditions that the Adams Express Company does.

Cross-Q. 96. Is such express matter, in fact, carried in any of the baggage or express cars, and on the same passenger trains with those used by the Adams Express Company by any person or company except the Adams Express Company?

A. It is not.

Cross-Q. 97. Does the Adams Express Company, so far as you know, regulate its charges for the carriage of express matter by the tariffs of railroads on which it operates?

A. Some of the rates on local business are governed by the railroad company's rates, but as a rule our rates are based upon the payments made to the roads for the service.

Cross-Q. 98. Even in cases where the charter of the companies fixes freight rates does the Adams or any other express company feel legally bound not to exceed the maximum charge fixed by law?

A. I don't know that they do.

Cross-Q. 99. Do you regard that the express companies and railroad companies are justly entitled to charge more for express matter carried by passenger trains than for the carriage of the same matter by freight trains? And if so, give the reason for your opinion.

(Objected to, as being a question for the court.)

1679 A. I should think they would be entitled to something more for carrying freight by passenger trains, if the speed of the passenger train exceeds that of the freight train. It is generally the case that the passenger train's speed exceeds that of the freight train.

Cross-Q. 100. What railroad companies running in and out of Philadelphia are now doing their own express business, and over what extent of railway lines, in a general way, and how long have they been so doing?

A. The West Jersey Railroad Company, between Philadelphia and Cape May, 90 miles; the Camden Atlantic railroad, between Philadelphia and Atlantic City, 60 miles; the Philadelphia and Atlantic City railroad, between the same places. These are what are termed seaside roads, and I don't think any express company has ever made application to run them. The Philadelphia and Reading R. R. Co. and its leased lines, covering some, I think, 300 miles.

Cross-Q. 101. What other railway companies in the United States or elsewhere are doing their own express business?

A. The Baltimore and Ohio, main line and branches, about between 600 and 700 miles. The Chicago Division and Sandusky Division, about 500 miles more. The Marietta and Cincinnati road, about 300 miles long. The Ohio and Mississippi, about 500 miles. Some other railroads in the West and Southwest, but I am unable to give the names and distances.

Cross-Q. 102. When an express company receives express business for transportation at points beyond its lines, by what means is such business accomplished?

A. It is transferred to connecting express companies, if there is a responsible company running; if not, it is held at the end of the company's line, and the consignee notified and asked for instructions.

Cross-Q. 103. Do or not railroad companies transact their business beyond their lines by like exchange with other responsible railroad companies?

A. I believe they make exchanges at their termini, but they do not give through bills of lading as a railroad company.

1680 Cross-Q. 104. Define what you mean by a through bill of lading as used in your last answer.

A. A through bill of lading would be a receipt given at the point of shipment through to point of delivery.

Cross-Q. 105. As a matter of practice with the railroad companies in the United States, is it or not a fact that any railroad company will issue a bill of lading for the delivery of freightable matter at any other point in the United States that may be reached by railroad lines, in which freight rates for the whole distance are named and guaranteed to the shipper?

A. Not to my knowledge, so far as railroad companies are concerned.

Cross-Q. 106. Have you ever been in the employ of a railroad company; if so, what, and in what capacity?

A. I have never been in the direct employment of any railroad company.

Cross-Q. 107. Have you any knowledge that railroad companies in the United States generally do not issue the bills of lading described in the 105th cross-question?

A. So far as my knowledge goes, where freight is sent to a railroad station for shipment to a point beyond the line of the railroad, the bill of lading is given to the end of the line of the road by which it is shipped. Over some of the more important railroad lines there are organizations formed either by individuals or the railroad interests, and such organizations have agencies in the principal cities and towns who are authorized to issue through bills of lading, and furnish through rates over the roads covered by the lines above referred to.

Cross-Q. 108. Independent of the fast freight lines and combinations referred to in the previous answer, do or not the railroad companies, for themselves, issue bills of lading to carry goods to the extent of their lines, and therein agree to turn the same over to connecting lines, naming and guaranteeing freight rates for the whole distance, and are or not such bills of lading in railroad parlance denominated through bills of lading?

A. In the case of the larger lines, I think bills of lading 1681 such as you describe are issued, and the through rates are sometimes named therein, but there is a clause in this bill of lading which limits the liability of the company issuing the same to the end of their line only. I cannot answer whether they are considered in railroad parlance through bills or not.

Cross-Q. 109. Is it or not well settled by the courts of this country that such clause limiting the liability of the receiving company to the end of its lines where freight rates are named and agreed upon for the whole distance that such limitation is void, and that such receiving company and all other intermediate companies actually receiving the goods are responsible for the safe delivery of the goods at ultimate destination; and is or not this matter well understood and acted upon by the shipping public?

(Objected to, as the witness is not an expert in the decisions of the thirty-eight States of the United States.)

A. I am not a lawyer, nor conversant with the decisions of the courts on such matters; therefore I cannot answer the question.

Cross-Q. 110. You have, in your examination-in-chief, frequently spoken of the Adams Express Company's issuing receipts. Will you be good enough to produce and file as a part of your answer to this question copies of all the different kinds of such receipts as are in use by the company?

A. I will, and now produce them.

No. 181.] Adams Express Company,

Great Eastern, Western, and Southern Express forwarders.

$——. NEW YORK, ———, 188–.

Received from ——— ———, sealed and said to contain ———.
Addressed ———.

Upon the special acceptance and agreement that this company is to forward the same to its agent nearest or most convenient to destination only, and there to deliver the same to other parties to complete the transportation, such delivery to terminate all liability of this company for such package; and also, that this company are not to be liable in any manner or to any extent for any loss, damage, or detention of such package, or of its contents, or of any portion thereof, occasioned by the acts of God, or by any person or persons acting, or claiming to act, in any military or other capacity in hostility to the Government of the United States, or occasioned by civil or military authority, or by the acts of any armed or other
1682 mob or riotous assemblage, piracy, or the dangers incident to
a time of war, nor when occasioned by the dangers of railroad transportation, or ocean or river navigation, or by fire or steam, unless specially insured by this company, and so specified in this receipt. In no event is this company to be liable for a greater sum than the above mentioned, nor shall it be liable for any such loss unless the claim therefor shall be made in writing, at this office, within thirty days from this date, in a statement to which this receipt shall be annexed, and the shipper and owner hereby severally agree that all the stipulations and conditions in this receipt contained shall extend to, and inure to the benefit of, each and every company or person to whom the Adams Express Company may intrust or deliver the above-described property for transportation, and shall define and limity the liability therefor of such other company or persons.

For the company: ——— ———.

Freight, ———.
Insured by Adams Express Company for ——, to ——— only.
For the company: ——— ———.

Insurance, $———.

Adams Express Company,

Great Eastern, Western, and Southern Express forwarders.

182—B.] New York, ———, 188–.

[Office, 59 Broadway.]

Received from ———, for collection: On ———, $———.

If not paid, said paper to be returned to the depositor, only on demand and surrender of this receipt and payment of charges.

It is part of the consideration of this contract, and it is agreed that said Adams Express Company are not to be responsible for any loss or damage which may happen to said paper, or its proceeds, while in the charge of any carrier or agent, to whom the same may be by them intrusted, nor for any loss or damage by fire, railroad, or ocean or river navigation, or from any cause whatever, unless in every case the same be proved to have occurred from the fraud or gross negligence of said express company or their servants. And if the said paper or proceeds is intrusted or delivered to any other express company or agent (which said Adams Express Company are hereby authorized to do) such company or person so selected shall be regarded exclusively as the agent of the depositor, and as such alone liable, and the Adams Express Company shall not be in any event responsible for the negligence or non-performance of any such company or person. Said Adams Express Company shall not be liable for any loss or damage which may happen to said paper or its proceeds, unless the claim for such loss or damage shall be made in writing to this office within thirty days of the above date, in a statement to which this receipt shall be annexed; nor shall said company be under any obligation to protest said paper unless an instruction so to do is hereon written. It is further agreed that
1683 said company shall not, in any event, be liable for any loss, damage, or detention caused by the acts of God, civil or military authority, or by rebellion, piracy, insurrection, or riot, or the dangers incident to a time of war, or by any riotous or armed assemblage.

For the company: ———.

Adams Express Company,

Great Eastern, Western, and Southern Express forwarders.

Principal office, 59 Broadway. Branch offices, 638 Broadway, 12 West 23d street, and 28 East 42d street, New York. Depot, Jersey City.

[No. 180. Domestic Bill of Lading.]

New York, ——, 188–.

Received of ——, ——, value ——, for which this company charges ——. Marked ——.

Which it is mutually agreed to be forwarded to our agency nearest or most convenient to destination only, and there delivered to other parties to complete the transportation.

It is part of the consideration of this contract, and it is agreed that the said express company are forwarders only, and are not to be held liable or responsible for any loss or damage to said property while being conveyed by the carriers to whom the same may be by said express company intrusted, or arising from the dangers of railroads, ocean or river navigation, steam, fire in stores, depots, or in transit, leakage, breakage, or from any cause whatever, unless, in every case, the same be proved to have occurred from the fraud or gross negligence of said express company or their servants; nor, in any event, shall the holder hereof demand beyond the sum of fifty dollars, at which the article forwarded is hereby valued, unless otherwise herein expressed, or unless specially insured by them, and so specified in this receipt, which insurance shall constitute the limit of the liability of the Adams Express Company. And if the same is intrusted or delivered to any other express company or agent (which said Adams Express Company are hereby authorized to do) such company or person so selected shall be regarded exclusively as the agent of the shipper or owner, and as such alone liable, and the Adams Express Company shall not be, in any event, responsible for the negligence or non-performance of any such company or person, and the shipper and owner hereby severally agree that all the stipulations and conditions in this receipt contained shall extend to and inure to the benefit of each and every company or person to whom the Adams Express Company may intrust or deliver the above-described property for transportation, and shall define and limit the liability therefor of such other company or person. In no event shall the Adams Express Company be liable for any loss or damage, unless the claim therefor shall be presented to them in writing at this office, within thirty days after this date, in a statement to which
this receipt shall be annexed. All articles of glass, or con-
1684 tained in glass, or any of a fragile nature, will be taken at
shipper's risk only, and the shipper agrees that the company shall not be held responsible for any injury by breakage or otherwise, nor for damages to goods not properly packed and secured for transportation. It is further agreed that said company shall not, in any event, be liable for any loss, damage, or detention caused by the acts of God, civil or military authority, or by rebellion, piracy, insurrection, or riot, or the dangers incident to a time of war, or by any riotous or armed assemblage. If any sum of money, besides the charge for transportation, is to be collected from the consignee on delivery of the above-described property, and the same is not paid within thirty days from the date hereof, the shipper agrees that this company may return said property to him at the expiration of that time, subject to the conditions of this receipt, and that he will pay the charges for transportation both ways, and that the liability of this company for such property while in its possession, for the purpose of making such collection, shall be that of warehousemen only.

For the company, ———.

Freight, ———.

ADAMS EXPRESS COMPANY,

[Form 31. Domestic Bill of Lading.]

Received of ——— the following articles, subject to the contract below: ———.

Which it is mutually agreed to be forwarded to our agency nearest or most convenient to destination only, and there delivered to other parties to complete the transportation.

It is part of the consideration of this contract, and it is agreed that the said express company are forwarders only, and are not to be held liable or responsible for any loss or damage to said property while being conveyed by the carriers to whom the same may be by said express company intrusted, or arising from the dangers of railroads, ocean or river navigation, steam, fire in stores, depots, or in transit, leakage, breakage, or from any cause whatever, unless, in every, case, the same be proved to have occurred from the fraud or gross negligence of said express company or their servants; nor, in any event, shall the holder hereof demand beyond the sum of fifty dollars, at which the said article forwarded is hereby valued, unless otherwise herein expressed, or unless specially insured by them, and so specified in this receipt, which insurance shall constitute the limit of the liability of the Adams Express Company. And if the same is intrusted or delivered to any other express company or agent (which said Adams Express Company are hereby authorized to do) such company or person so selected shall be regarded exclusively as the agent of the shipper or owner, and, as such, alone liable, and the Adams Express Company shall not be, in any event, responsible for the negligence or non-performance of any such company or person; and the shipper and
owner hereby severally agree that all the stipulations and
1685 conditions in this receipt contained shall extend to and inure
to the benefit of each and every company or person to whom the Adams Express Company may intrust or deliver the above-described property for trnsportation, and shall define and limit the liability therefor of such other company or person. In no event shall the Adams Express Company be liable for any loss or damage, unless the claim therefor shall be presented to them, in writing, at this office, within thirty days after this date, in a statement to which this receipt shall be annexed. All articles of glass, or contained in glass, or any of a fragile nature, will be taken at shipper's risk only, and the shipper agrees that the company shall not be held responsible for any injury, by breakage or otherwise, nor for damage to goods not properly packed and secured for transportation. It is further agreed that said company shall not, in any event, be liable for any loss, damage, or detention, caused by the acts of God, civil or military authority, or by rebellion, piracy, insurrection, or riot, or the dangers incident to a time of war, or by any riotous or armed assemblage. If any sum of money, besides the charge for transportation, is to be collected from the consignee on delivery of the above-described property, and the same is not paid within thirty days from the date hereof, the shipper agrees that

this company may return said property to him at the expiration of that time, subject to the conditions of this receipt, and that he will pay the charges for transportation both ways, and that the liability of this company for such property while in its possession for the purpose of making such collection shall be that of warehousemen only.

Cross-Q. 111. Do or not these receipts when filled up with a description of the value, kind, or quality of the goods or things receipted for constitute the contract between the shipper and the company; and does or not the company require the shipper or his agent to sign his name somewhere upon the receipt in evidence of acceptance of the terms and conditions thereof?

A. The receipts are considered as a contract, but the shippers are not required to sign these receipts or any part thereof. We know nothing of the contents of the packages or parcels shipped, merely giving a receipt for a package, box, trunk, or whatever may be offered. Where value is declared at time of shipment the amount is entered in the receipt; when value is not declared, the fact is so stated in the body of the receipt.

Cross-Q. 112. What requirement has the company upon the shippers about disclosing truly the contents or value of packages tendered for shipment?

1686 A. None.

Cross-Q. 113. Would the company receive a package said to contain bank notes, or other representatives of money, stocks or bonds, bills, checks or notes, or jewelry, without any knowledge of the value of the contents of such packages?

A. Yes; they receive them every day.

Cross-Q. 114. By what means, then, does the company fix its charges for carrying such packages, and how does it ascertain the extent of its liability in case of loss?

A. It charges by the size of the package the same as it would for a package of brown paper. Our liability is fixed by the terms of our receipt at a sum not exceeding $50.

Cross-Q. 115. Do you mean to be understood that if I bring the company fifty $1 bills in a sealed envelope, and at the same time a little package containing fifty $1,000 bills, which would be of the same dimensions, that I would be charged the same price for the carriage of each, and that in case of loss of both packages the company would claim that they should pay me only $50 for the loss of each of the packages?

A. If the packages were receipted for separately, we should claim that our liability was limited to $50 in each case. The charge would be the same on each package.

Cross-Q. 116. Suppose I should come with the packages described in the preceding question and disclose truly the contents of each, and so indorse the packages, what would then be your charges and the limit of your liability?

A. Our charges would be in accordance with our tariff rates between the points to which we carried the packages, and our liability would be the amount specified in the receipt for each parcel.

Cross-Q. 117. Would your charges be more or less in the latter than in the former case?

A. Greater. The charge is based on the value declared at the time of shipment.

Cross-Q. 118. Are your charges based on declared value upon a schedule of percentages on value according to distances?

1687 A. They are not on percentages, but the charge is made according to the distance carried.

Cross-Q. 119. Will you be good enough to annex and make part of your answer to this question a schedule of rates of all the charges made by the express company as in use by it at present or in April last?

A. It wouldn't be possible to have the schedule made inside of from four to six months, as we have about five thousand rates from every office.

Cross-Q. 120. Have you or not in use at the principal office of the company in Philadelphia a printed schedule of rates distributed among the agents of the company in your division for their use and guidance in the transaction of their business, as well as for distribution among the patrons of the company?

A. We have no printed schedule. Our agents are each furnished with slips made by hand giving the rates from their particular station to the other stations on the lines of our company. We do not furnish rates to the general public except upon inquiry at our office; and then only between the points to and from which they wish to ship.

Adjourned to August 30, 1880, at 11 a. m.

NEW YORK, *August* 30, 1880—11 A. M.

Present: Counsel as before.

Cross-examination of the witness LOVEJOY continued:

Cross-Q. 121. Will you annex as a sample of your freight rates the list furnished to your agent at Altoona as a part of your answer to this question?

A. I will.

Cross-Q. 122. You have produced a copy of a letter from yourself to H. F. Kenney, superintendent of the Philadelphia, Wilmington and Baltimore Railroad Company, purporting to state the terms upon which the Adams operates the lines of that road. Will you annex the same to your deposition as a part of your answer to this question, and say whether the same is a true copy?

1688 A. It is a true copy, and it is hereto annexed:

ADAMS EXPRESS COMPANY, SUPERINTENDENT'S OFFICE,
622 CHESTNUT STREET, PHILADELPHIA, *March* 1, 1879.

DEAR SIR: The following is my understanding as the agreement as made between us at our last interview:

The Philadelphia, Wilmington & Baltimore Railroad Company to provide and transport the cars containing express matter upon the following passenger trains:

One (1) car by the through Washington train, south bound, which now leaves New York about 9.55 p. m.

One (1) or more cars by the south-bound train, now leaving Philadelphia at 11.30 p. m.

One (1) car north by the through Washington to New York train, now leaving Baltimore at 11.50 p. m.; and by the north-bound train, now leaving Baltimore at 7.30 p. m., one (1) or more cars—the number of cars, however, not to exceed three (3) unless the excess number can be conveyed without interfering with the regular schedule time of the train.

To carry a second car by the above-mentioned through New York and Washington trains, north or south, upon application from the Adams Express Company for such extra car, provided that in so doing it will not increase the number of cars in the train to such an extent as to preclude the observance of proper schedule time.

To haul one (1) or more cars upon either of the morning trains now leaving Baltimore at 6.15 and 7.15 o'clock.

To provide the same facilities as at present afforded in the various cars of the local trains running between Philadelphia and Baltimore and intermediate points for the accommodation of express matter between the two cities mentioned, as well as between the various local stations on the route.

In case the express company may have freight to send by any of the other north or south bound passenger trains not heretofore mentioned, the railroad company will provide the necessary facilities therefore either in their baggage cars or by extra express cars, provided that by so doing it does not interfere with the transportation of the baggage or with the proper running time of such trains.

The railroad company to run a fast freight train, south bound, as at present, leaving Philadelphia at or about midnight (or at such hour as will make the proper connection with what is called "the mail express train," now running between New York and Philadelphia, and which leaves New York at 7.30 p. m.), and to arrive in Baltimore at or before 7.00 a. m., with the view of connecting with the trains of the roads diverging therefrom, and to provide the cars and transport by said train any additional freight which the express company may desire transported to Baltimore or points south thereof.

The maximum loading of a car by passenger train to be
1689 sixteen thousand (16,000) pounds, and by freight train to be
eighteen thousand (18,000) pounds.

The railroad company to pay all charges for transporting cars over the Junction railroad to or from the north side of Market street only.

The Adams Express Company to keep an accurate account of all weights transported in accordance with the foregoing, and report the same to said railroad company monthly, paying therefor, on or before the tenth day of each succeeding month, at the following rates:

On the first forty thousand (40,000) pounds of through freight, each day, at the rate of thirty-three (33) cents per hundred pounds, and on all through freights in excess of the above weight, at the rate of twenty-five (25) cents per one hundred pounds. Each two (2) tons of local freight, *i. e.*, freight transported on the *the* said railroad for any distance less than that between the limits of the cities of Philadelphia and Baltimore, shall be settled for as one (1) ton of through freight, excepting for the freight carried between the cities of Philadelphia and Wilmington, for which latter the express company shall pay at the rate of fifteen (15) cents per hundred pounds.

The express company to assume all risks the same as under contract of March, 1866.

The express company further agrees that the payments under the terms herein provided shall not be less than sixty thousand (60,000) dollars per annum.

This agreement to take effect from the date hereof and to terminate upon ninety (90) days' notice from either party thereto of their desire so to do.

If this accords witn your understanding, please so signify by letter, and oblige,

Respectfully,
(Signed) F. LOVEJOY, *Superintendent.*

To H. F. KENNEY, Esq.,
Superintendent P. W. & B. R. R., Philadelphia.

Cross-Q. 123. If there is any other express company anywhere operating the same lines of railway for full express purposes as those operated by the Adams Company, give the names of such railway lines?

A. There are none in my divisions, and beyond that I cannot answer.

Cross-Q. 124. Does or not the Adams Express Company interchange business and pro-rate charges with railroad expresses?

1690 A. We exchange with the railroad expresses at the termini of our lines or connecting points between them, but do not pro-rate the charges, so far as my knowledge goes.

Cross-Q. 125. Does or not the Adams Express Company interchange business and pro-rate charges with other express companies; if any, name one or two of such?

A. We interchange business with the American, United States, and Southern Express companies, but the charges are not pro-rated. Each company fixes its rate through or from the points of transfer, which combined rates make up the through rate.

Cross-Q. 126. Then, if I understand you, you do business with the railroad expresses and the express companies proper on the same basis. Explain what is meant by exchange of business and by prorating?

A. We do not exchange with railroad expresses in any particular in the way that we do the other companies referred to, since it is the general desire of railroad expresses to fix their own rates and charge to the end of their lines. With the express companies we make, in many cases, through way-bills from points on our line to points in theirs, fixing through rates in accordance with the requirements of the business, and the proportion of such through rate is a matter of special agreement between the parties. My understanding of the word pro-rate is to settle on the basis of the miles run by each.

Cross-Q. 127. Does or not the Adams Express both interchange and pro-rate with the Southern Express Company?

A. They interchange, but do not pro-rate on actual distances.

Cross-Q. 128. State the precise difference in the mode of interchanging business with railroad companies and what you would call express companies proper.

A. As a rule, in my department, freight originating with our company when destined to points on the territory of the railroad expresses, we bill to the point of transfer at our schedule rates, they, at such point, paying our charges and receipting to us for the freight. The same rule governs when they receive freight in their territory going to points in ours. We pay them the charges at the
1691 point of transfer and give them our receipt for the freight.
With the other express companies for what is termed local matter we do precisely the same as with railroad expresses. Between the larger cities we make through way-bills from the cities in our territory to those in other expresses, first fixing such through rates in such cities and then agreeing what proportion each company shall receive of such through rates.

Cross-Q. 129. Did you ever know of a case in which the Baltimore & Ohio Railroad Co. Express refused to allow the Adams Express Company to give a through bill from any point on the latter's lines to any point on the former's lines?

A. I don't know that I could say that they have refused; as to my own knowledge, we have not made the request, but they have asked us to bill matter for local points on their road to the termini of our line on part of connection only.

Cross-Q. 130. Is there any reason why through bills of lading issued by a railroad express or the Adams Express should not be recognized by either company in the same manner that like bills are recognized by and among express companies proper, so called?

A. If the railroad companies were equally responsible with the Adams Express Company, and would agree to all the conditions that are made between the express companies, I do not see that there should be any reason.

Cross-Q. 130*. Does or not the unwillingness of express companies proper, so called, to allow railroad company expresses to give through bills as other express companies give, originate in the fact that express companies generally are unfriendly to the idea of railroad companies doing their own express business; and is or not such refusal to give or receive through bills of lading a practical discrimination against railroad expresses, having for its effect their discouragement and embarrassment in their operations?

A. I think not; and, so far as my knowledge goes, we have accorded the privilege of billing through when it has been asked, they complying with the same conditions and terms as the other express companies.

1692 Cross-Q. 131. Then if the railroad expresses should request of the express companies proper the privilege of giving and receiving through bills, so far as you know or believe, the request would be granted?

A. I think it would, if they gave satisfactory evidence of responsibility and willingness to carry out all conditions incident to such exchange. However, this is a matter the management would have to pass upon.

Cross-Q. 132. Is it or not the practice of railroad companies in the United States to allow interchange of rolling-stock; that is to say, where freight is loaded into the car of one company it shall be transported to destination without breaking bulk upon roads of like gauge; and do or not the laws of the State of Pennsylvania absolutely require the companies to allow such interchage of rolling-stock?

A. Such interchange is made with the ordinary freight in freight cars when in full car-loads, but such is not the custom with passenger equipment, which embraces passenger, baggage, and express cars. I am not familiar with the law governing such matters.

Cross-Q. 133. Are you able to state the gross and net earnings and the capital invested in your division during the last fiscal year of and by the Adams Express Company?

A. I am not.

Cross-Q. 134. Are there no books or papers to which you have access which would give this information?

A. There may be at our general office.

Cross-Q. 135. Will you hereafter obtain such information and annex it hereto, as a part of your answer to this question, in the form of a written statement?

A. I have no right to examine the books at the general office, and therefore cannot furnish such a statement.

Cross-Q. 136. Would such examination be denied to you, and will you ask permission to make it?

A. I had rather answer that under advice of counsel.

(Counsel instructs the witness that he need not produce any statement, until the further order of this court, which will show either the capital or the gross receipts or the net earnings of the Adams Express Company, upon the ground that such matters are
1693 not in issue, are not pertinent, are not founded on the examination-in-chief, and relate to the private business of the company, which is not in issue in the suit; and counsel for the plaintiff states that he would have objected to all the previous questions seeking such information had he not been absent temporarily, and he therefore now objects, upon the above grounds, to each and every of such questions, and gives notice that he will send a copy of such questions and of this objection to the court for its ruling thereon.)

Cross-Q. 137. Are you a shareholder or interested in any shares or the profits of the Adams Express Company?

A. I am not.

Cross-Q. 138. Is it the custom with the Adams Express Company, or its officers, to make periodical written or printed statements to the shareholders or the public, showing the amount of money it has invested, its gross and net earnings, and its operations generally?

A. That is a matter that comes under the managers or directors; and as I am not one, I cannot answer it.

Cross-Q. 139. Have you no knowledge as to whether such reports are made or not?

A. I have no knowledge of such reports, but they might be made without my knowledge.

Cross-Q. 140. Mr. Babcock, in his testimony, question and answer 74, did not seem to think that the employés of transportation lines were also the employés of the express companies; in your question and answer 52, if I understood the answer, you were of a different opinion. After reading both answers, explain the matter fully, so that it may be clearly understood.

A. The question asked Mr. Babcock was in reference to our employés, as a whole, and referred particularly to station agents. The question 52 asked me was in reference to baggage-masters and messengers, an entirely distinct service.

Cross-Q. 141. Suppose the question to Mr. Babcock refers to employés generally, of all classes, do you differ or agree in his answer?

A. I agree with Mr. Babcock.

Cross-Q. 142. In what capacity were you employed in the Adams Express Company, and where stationed, if at all, at the time 1694 the Adams Express Company quit operating the lines of the Baltimore and Ohio Railroad Company, and those controlled or owned by it?

A. I was superintendent at Philadelphia.

Cross-Q. 143. What time did such quitting of the Baltimore and Ohio railroad occur?

A. I think it was in August, 1877, although I am not positive.

Cross-Q. 144. Did it occur during the strikes and riots of that year?

A. I think it was about that time.

Cross-Q. 145. Did or not the Baltimore and Ohio Railroad Company, immediately thereafter, or as soon as practicable, arrange to do its own express business?

A. They did.

Cross-Q. 146. And has it or not ever since continued to transact its express business over its own lines, and those under its control up to the present time?

A. I believe it has.

Cross-Q. 147. Has the Adams Express Company ever, at any time, by litigation or otherwise, insisted upon doing the business formerly done by it over such lines of the Baltimore and Ohio Railroad Company?

A. These are matters which would not come under my supervision, and I cannot answer.

Cross-Q. 148. Are transfer orders—I mean telegraphic transfer orders for money—issued at any and all of the Adams Express Company agencies; if not, say which?

A. Not in my department, except in very special cases, and only by my authority. We do not make a practice of this, but where parties are well known to us, and deposit the amount with us, we occasionally telegraph to the point where they desire the payment made to make such payment.

Cross-Q. 149. You spoke of carrying a package of money across the Jersey City ferry, and thence to Washington over the lines of five different railroads. After the package was placed in the safe and in the baggage car at Jersey City, how often does that iron safe change cars before it reaches Washington by the ordinary course of transportation?

1695. A. It does not change cars from Jersey City to Washington, as over these particular roads there is an agreement to run through cars between New York and Washington.

Cross-Q. 150. Is it the custom with the Adams Express Company to receive for transportation express matter without any knowledge of the contents or value thereof, and without limiting the liability of the company in case of loss by some amount named in the receipt?

A. It is the custom to ask all shippers the value of the package at the time of shipment, and if they decline to state the value there is either written or stamped on the face of the receipt the following: "Value asked, but not given."

Cross-Q. 151. In what cases do you use the "$50 valuation"?

A. In all cases where the value is not declared to a greater amount.

Cross-Q. 152. Suppose the express company had reason to suspect that its customer was in the habit of understating the value of his shipments for the purpose of saving to himself in the amount of charges; by what means would it endeavor to protect itself?

A. We have reason to suspect this every day. In a very isolated case, where we had positive information that the shipper was systematically defrauding us, I should demand a rate which I should consider fair for the service performed, although I have never had any instructions in this direction, and cannot answer what the general policy of the company would be.

Cross-Q. 153 Suppose the express company had no right to limit its liability by the $50 or other arbitrary valuation, so as to protect itself in case of loss; would you then regard it as safe to receive and receipt for packages—contents and value unknown?

A. I am not familiar enough with the law governing such shipments to answer.

Cross-Q. 154. Is there any arrangement in the operation of the Adams Express Company by which packages of money or valuables are opened by the receiver in the presence of the
1696 messenger delivering, and where the value has been not
stated or understated by the shipper claim is made against the sender or receiver for payment of proper charges according to schedule rates?

A. I know of none.

Redirect examination:

R. D. 155. Is not the average rate of speed of ordinary railroad freight trains about 12 miles an hour?

A. Yes.

R. D. 156. Do not railways very frequently run what are called mixed trains, consisting partly of freight and partly of passenger cars?

A. I think most all the railways do this.

R. D. 157. Is express matter ever transported in the baggage car in such mixed trains?

A. It is.

R. D. 158. In your opinion, does it cost a railroad company more to haul express matter in such baggage car of such mixed train than it would to haul the same matter in the freight car in such mixed train?

A. Not any more.

R. D. 159. So far as you are advised, is it not the invariable usage of railway companies in this country, issuing passenger tickets over other than their own lines of railway, and over roads with which they run in connection, to state on such tickets that the company issuing the same will not be liable for damage occurring off its own line, or that it will be liable only for damage occurring on its own line?

(Objected to, as not relevant.)

A. It is.

R. D. 160. Will you please illustrate such limitation by inserting in your answer a railroad ticket containing the same?

A. I will; herewith is the ticket.

1697 NEW YORK AND MANHATTAN BEACH R'Y CO.
Whitehall] NEW YORK to [Station.
MANHATTAN BEACH.
☞This Ticket is sold at a reduced rate, and is valid for a continuous passage only. The N. Y. & M. B. Railway Co. will not be responsible for damage occurring upon connecting railroads or boats.
EXCURSION. W. D. HYDE,
G. T. A.

R. D. 161. Is it not an usual oocurrence to find the same limitation as to baggage contained either in the passenger ticket or the substance thereof stamped upon the baggage check?

A. It is.

R. D. 162. So far as you know, aside from railroads which unite in co-operative lines, so called, is it not the usage of railroads to put a similar limitation in freight receipts issued for shipments to points beyond these lines?

A. It is.

R. D. 163. You have stated that it was the instruction of the Adams Express Company to its receiving clerks to ask the value of express packages when offered for transportation, and that when not given that fact was stamped upon the receipt. Can you produce in answer to this, a receipt bearing one of the company's stamps in that regard?

A. I can, and herewith produce a receipt.

Adams Express Company,

Great Eastern, Western, and Southern Express Forwarders.

Principal office, 59 Broadway. Branch offices, 638 Broadway, 12 West Twenty-third street, and 28 East Forty-second street, New York. Depot, Jersey City.

[No. 180. Domestic Bill of Lading.]

NEW YORK, ——, 187–.

Received of ——, value, —— (value asked and not given), for which the company charges ——. Marked ——.

Which it is mutually agreed is to be forwarded to our agency nearest or most convenient to destination only, and there delivered to other parties to complete the transportation.

It is part of the consideration of this contract, and it is agreed, that the said express company are forwarders only, and are not to be held liable or responsible for any loss or damage to said
1698 property while being conveyed by the carriers, to whom the same may be, by said express company, intrusted, or arising from the dangers of railroads, ocean or river navigation, steam, fire in stores, depots, or in transit, leakage, breakage, or from any cause whatever, unless, in every case, the same be proved to have occurred from the fraud or gross negligence of said express company or their servants; nor in any event shall the holder hereof demand beyond the sum of fifty dollars, at which the article forwarded is hereby valued, unless otherwise herein expressed, or unless specially insured by them, and so specified in this receipt, which insurance shall constitute the limit of the liability of the Adams Express Company. And if the same is intrusted or delivered to any other express company or agent (which said Adams Express Company are hereby authorized to do), such company or person so selected shall be regarded exclusively as the agent of the shipper or owner, and as such alone liable; and the Adams Express Company shall not be, in any event, responsible for the negligence or non-performance of any such company or person; and the shipper and owner hereby severally agree that all the stipulations and conditions in this receipt contained shall extend to and inure to the benefit of each and every company or person to whom the Adams Express Company may intrust or deliver the above-described property for transportation, and shall define and limit the liability therefor of such other company or person. In no event shall the Adams Express Company be liable for any loss or damage unless the claim therefor shall be presented to them in writing at this office within thirty days after this date, in a statement, to which this receipt shall be annexed. All articles of glass, or contained in glass, or any of a fragile nature, will be taken at

shipper's risk only, and the shipper agrees that the company shall not he held responsible for any injury by breakage or otherwise, nor for damage to goods not properly packed and secured for transportation. It is further agreed that said company shall not, in any event, be liable for any loss, damage, or detention caused by the acts of God, civil or military authority, or by rebellion, piracy, insurrection, or riot, or the dangers incident to a time of war, or by any riotous or armed assemblage. If any sum of money, besides the charges of transportation, is to be collected from the consignee on delivery of the above-described property, and the same is not paid within thirty days from the date hereof, the shipper agrees that this company may return said property to him at the expiration of that time, subject to the conditions of this receipt, and that he will pay the charges for transportation both ways, and that the liability of this company for such property while in its possession for the purpose of making such collection shall be that of warehousemen only.

For the company: ——— ———.

Freight, ——.

1699 R. D. 164. In interchanging freight between two express companies, in case of a shipment through the Adams to points reached by the American or other connecting express, and the shipper wishes to prepay to destination, how does the Adams know what to charge to destination?

A. They are furnished with the tariff of such connecting express company.

R. D. 165. Are there any points on the lines of the Adams Express where express matter is transferred from the cars of one railroad company to the cars of another railroad company to continue the transportation to destination?

A. Yes; there are a great many.

R. D. 166. When such cases occur, does the second railroad company ever demand the inspection of the express matter as a condition precedent to transporting the same over such second or third railroad?

A. Not to my knowledge.

R. D. 167. You have been asked on cross-examination about the Adams Express Company quitting the line of the Baltimore and Ohio railroad, and as to what efforts, if any, it made to regain a position on such road. Was not the Adams Express Company virtually excluded from such road by the demand of a sum which the express company did not deem just and reasonable, and which the express business thereon would not warrant it in undertaking to pay?

A. It was.

R. D. 168. Are there any express shipments in your division destined for either of the cities of Louisville or Lexington, Kentucky?

A. There are.

F. LOVEJOY.

Sworn to before me.

JOSEPH GUTMAN, Jr.,
Commissioner.

The plaintiff introduces in evidence an act of the Legislature of the State of Kentucky, being chapter 459 of the laws of 1870, an act to amend "An act to tax railroads and other corporations in aid of the sinking fund, approved February 20, 1864."

1700 And also an act of the same Legislature of March 2, 1860, entitled "An act to regulate agencies of foreign express companies."

Also a like act of February 20, 1864, entitled "An act to tax railroads, turnpike roads, and other corporations in aid of the sinking fund."

Also a like act of February 12, 1866, entitled "An act to amend an act to regulate certain corporations in Kentucky," approved June 3, 1865.

Also a like act of February 12, 1866, entitled "An act regulating the fees to be paid by foreign insurance and express companies."

A statement showing the net and gross earnings of Adams Express Co. and money invested in Lovejoy's division, to be filed as in answer to his cross-question 133:

Adams Express Company.

Pennsylvania Division:	
Gross receipts July 1, '79, to June 30, '80, inclusive	$1,067,262 32
Pennsylvania Division:	
Earnings July 1, '79, to June 30, '80, inclusive	229,768 45
Am't invested in real estate and personal property	733,290 00

I make above statement in answer to cross-question 133.

F. LOVEJOY.

(The three tariffs produced by this witness, being already in print and taking up a great many pages, are not printed by the plaintiff.)

JAMES M. THOMPSON, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by the learned counsel for complainant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is James M. Thompson; my age is 69 years; my residence is at Springfield, Massachusetts, and my occupation that of secretary of the Adams Express Company, and other occupations.

1701 Q. 2. Are you the person of that name, named in the bill of complaint herein?

A. I am.

Q. 3. Are you familiar with the earliest history and the commencement of the express business in the United States?

A. I am familiar with it.

Q. 4. Did you have anything—and, if so, what—to do with the early history or conduct of the express business in any part of the United States?

A. I had something to do with the organization of the Adams Express Company.

Q. 5. That company was organized is 1854, was it not?

A. I think so; if my memory serves me.

Q. 6. Prior to that date (that is, 1854) had you been engaged in the conduct of an express business, or connected therewith?

A. I had. I commenced in the express business in the latter part of 1840, and have been in it ever since.

Q. 7. Prior to 1854 were there any other individuals or firms to your knowledge also engaged in an express business?

A. There were several.

Q. 8. Over what line or routes were you yourself, or your firm, then engaged in conducting such business?

A. Over the Hartford and Springfield R. R., Boston and Albany R. R., Connecticut River R. R., and Pittsfield and North Adams R. R.

Q. 9. Under what name was the express business conducted over these lines?

A. Thompson & Co.

Q. 10. Were you also connected under any other name with the express business?

A. Yes, sir.

Q. 11. What name, and over what route?

A. Thompson, Livingston & Co. Over the route from Boston to New York, by steamers, Stonington R. R., and Boston and Providence R. R.

1702 Q. 12. Please state the names of the other persons or firms who were also at that early day engaged in the express business, and the routes which such persons or firms severally occupied.

A. There was Harnden & Co., Sanford & Shoemaker, Phillips & Spooner, Kingsley & Co., Hall Eastern Express Co., Leonard & Co., and numerous others whose names do not occur to me now. Sanford & Shoemaker were over the route between New York and Washington. Harnden over the route between Boston and New York by the way of Stonington; also Boston and Albany. Phillips & Co. over the route between Hartford and New York by railroad and steamers. Kingsley & Co. between New York and Boston over the Old Colony R. R., and by boats from Newport. Livingston & Co. between Philadelphia and New York. Leonard & Co. over the Boston and Worcester R. R., from Worcester to Boston.

Q. 13. Was there a firm of Adams & Co.?

A. Yes, sir. Running over the route between New York and Boston, over the Boston and Worcester and Norwich R. R., and by steamer from Norwich.

Q. 14. At that early day did any railroad or steamboat company, to your knowledge, refuse to extend to the express business the railway and steamboat facilities needed therefor?

A. No, sir. On the contrary, were always very desirous to grant any aid they could to facilitate the business.

Q. 15. At that period please describe how the express business was conducted, and in what it usually consisted.

A. Certain space in cars and on steamboats was allowed, for which the express companies were to pay certain prices. They were permitted to put into those spaces anything except combustible materials, dangerous articles, etc. The principal business of the expresses at that time was carrying bank notes, specie, and other valuable parcels, jewelry, etc., and for the collection of notes and drafts, and bills payable at bank and otherwise. When more than this space was occupied extra rates at a low figure for freight outside was charged. A messenger with an iron safe always accompanied the express-freight free of extra charge.

Q. 16. Please state when and by whom the Adams Express Company was originally constituted.

1703 A. I think in 1854. By the proprietors of several other express companies combining together. Putting in their several routes at a valuation, for which they were paid in stock of the new organization. The names were Mr. Alvin Adams, William B. Dinsmore, Edwards S. Sanford, Samuel M. Shoemaker, James M. Thompson, Daniel Phillips, Clapp Spooner, Johnston Livingston, L. W. Winchester, Robert F. Weaver, and Stephen O. Potts.

Q. 17. Has the Adams Express Company ever issued any stock by the name of stock, or was the original division in shares, giving each share-holder so many shares in common with the other shareholders?

A. It was share-holders, not stockholders.

Q. 18. Will you please look at the bill of complaint and state whether, so far as you know, the residence and citizenship of the various persons you have named is correctly set forth in such bill?

A. I think they are correctly stated.

Q. 19. Are all such persons, so far as you now know, share-holders in said company?

A. Yes, sir.

Q. 20. Has the said company since said date been engaged, and is it now engaged, in the conduct of the express business?

A. Yes, sir.

Q. 21. Since the commencement of the express business by the various persons or firms named by you have the services rendered by the express companies to the public increased in character and in kind; and, if so, in what way?

A. Yes, sir. They have increased wonderfully in every way. The business has been remarkably successful by reason mainly of the perfect confidence the public has had in them.

Q. 22. In what general divisions does the express business of the country run; in other words, what kind of business does, in general terms, the express business now extend to?

A. Principally the carrying of valuable parcels and packages, bank-notes, specie, etc.

Q. 23. This is above and beyond the carrying of parcels and goods, wares and merchandise, is it?

A. Yes, sir.

1704 Q. 24. Has the Adams Express Company anything; and, if so, in a general way, what, to do with the movement of the money of the country?

A. They have much to do with it, carrying all the Government money to and from the Treasury, and I should say seven-eighths of money going to individuals otherwise than by draft.

Q. 25. Have you a general idea of the number of national banks in the United States, and of the aggregate of their circulation?

A. From the information I got this morning there are 2,075 or 2,076 national banks, and the circulation about $350,000,000.

Q. 26. Do you know, in a general way, how much is done by the Adams in transporting bank notes for redemption?

A. As near as I can judge the redemption of one year would be from $240,000,000 to $250,000,000. And the manner in which that money is moved out and in from the exchange back and to the banks of the Treasury it necessitates the carrying by the Adams Express Co. annually, at least four times the above amount stated.

Q. 27. Can you make any statement as to the amount of capital of the various express companies, or as to the general amount of capital understood to be invested therein?

A. I don't know exactly, but as near as I can ascertain between $30,000,000 and $40,000,000—about $40,000,000. That comprises simply the large companies, not taking in the small ones at all.

Q. 28. Has the movement of the moneys of the country by the express companies anything, and, if so, what, to do with the rates of exchange between the principal cities of the country; for illustration, between Boston and New York or New York and Philadelphia?

A. It has had the effect of materially reducing the rates of exchange, and keeps exchange low.

Q. 29. You have spoken of the confidence which the public has in the express companies of the country. Please state what has given rise to such confidence.

A. Prompt action in all contracts, faithful discharge of 1705 their obligations to their patrons, prompt and satisfactory settlemens of all claims for damage, and a confident belief, on the part of the public, that the well-organized express companies are the safest and most reliable parties to whom valuable packages could be intrusted. Another reason is, the unreliability of conveying parcels of money through the mails. I know, of my own knowledge, that most people have more confidence in the Adams Express Company than they have in any bank in the United States.

Q. 30. As a general proposition, do not the express messengers, on some or all of the roads, ride in the baggage car on passenger trains?

A. Yes, sir; and they are all well armed, too.

Q. 31. Since you have been connected with the express has any railroad company, to your knowledge, complained to you that the presence of an express messenger in a baggage car interfered with, or was not consistent with, the safety of the other property in the baggage car, which was in the custody of the baggage-master?

A. No, sir; never.

Q. 32. Has it ever occurred, to your knowledge, on short local lines, or otherwise, that a baggage-master was also employed as an express messenger, for either through or local express matter?

A. I have never known an instance to occur.

Q. 33. Then, so far as your knowledge extends, there has always been, when express matter was carried in the baggage car, the two employés of the railroad and express company therein?

A. Always.

Cross-examined by Mr. Barnett:

Cross-Q. 34. At the organization of the Adams Express Company, between and among the individuals referred to by you, was or not an agreement made among you, which was reduced to writing and signed by each of you, which is now in your custody as secretary of the company?

A. There were articles of association drawn up and signed; but I haven't it in my possession, and never have had. It has always been kept in the principal office here.

1706 Cross-Q. 35. Who is the proper custodian of such paper?

A. As our principal office is in New York; as the directors' meetings are most always held here, it is thought best that such documents as that should be kept in the principal office. And as I do not reside here, I don't think that I am the proper custodian. It is not for me to say.

Cross-Q. 36. What are the duties of the secretary of the Adams Express Company, in relation to the safe-keeping and custody of its records and papers?

A. His duties are to keep the records correctly, lock them up when the record is finished, and deposit them in the vault of the company.

Cross-Q. 37. Does the Adams Express Company have any printed constitution or by-laws for the government of its members and agents and servants; if any, will you procure and file a copy thereof as part of your answer to this question?

A. There has been some printed copies of the articles of association; whether I could procure one or not I don't know. The articles of association govern the conduct of the company, and instructions are given to the various superintendents by the board.

Cross-Q. 38. Have these articles of association been recorded in any public office?

A. Not to my knowledge.

Cross-Q. 39. Did these articles of association fix the value of the interest of each member therein at the original formation of the Adams Express Company?

A. I think it does not.

Cross-Q. 40. Was the interest of each member appraised according to the actual value in money of the property he put into the enterprise?

A. It was considered at the time.

Cross-Q. 41. Was nothing in value allowed except for the safes and chests and horses and wagons, and other like property?

A. Yes, sir.

Cross-Q. 42. What was it?.

A. Contracts, business contracts, good will, etc.

1707 Cross-Q. 43. The complaint states that $1,200,000 was the value of the original shares. What proportion approximately of this sum was allowed originally for good will and contracts?

A. I am not able to say.

Cross-Q. 44. Did either member put in in property at that start anything except his safes, chests, horses, and wagons, and did the value of these aggregated amount to a half a million of dollars?

A. I couldn't say, because I don't know what they put in. I never valued the property; I don't think any member did; I can't answer that question.

Cross-Q. 45. The complaint states in effect that the cash capital, so to speak, or stock in trade, had increased from $1,200,000 to $12,000,000. Has this increase been made by the declaration of dividends in the nature of stock dividends in whole or in part, or by subscribing and paying in new money?

A. The best of my recollection is this, that a part was a stock dividend and a part the stock was paid for.

Cross-Q. 46. Was or not the stock dividends allowed to the then share-holders given to them without any payment therefor, and some of the increase shares sold to new takers, and the proceeds paid into the treasury of the company?

A. At one time the old share-holders got stock without payment, and at another time paid for it. The proceeds of that sold was paid into the treasury of the company.

Cross-Q. 47. Before the organization of the Adams Express Company did you and the firms with which you were connected in the express business obtain facilities for your expresses from the transportation lines under and by virtue of special contracts, either written or verbal, which clearly fixed the rights of both parties?

A. When I first went into the express business I commenced alone; afterwards took two partners. As a business firm articles of agreement were drawn up, setting forth our rights and privileges, and renewed annually by our firm and the railroad corporation continued for a few years, and afterwards a simple memorandum
1708 of agreement, which continued until our firm, Thompson & Co., sold out to the American Express Company.

Cross-Q. 48. Since the organization of the Adams Express Company, so far as your knowledge extends, has or not such facilities been obtained by that company under like contracts or memoranda?

A. The Adams Express Company, I presume, have made contracts with railroad corporations.

Cross-Q. 49. Does the Adams Express Company own or have any interest in any shares of the capital stock of the Southern Express Company, or the Texas Express Company, or any other express company?

A. Not to my knowledge; I think not.

Cross-Q. 50. Do you own any shares in the Adams Express Company, or either of the others named, or any other?

A. I own shares in the Adams; not any in either of those named.

Cross-Q. 51. In answer to question 24 I understand you to say that the Adams Express Company carries all the Government money to and from the Treasury for certain purposes. How do you know that it carries all of such money, to the exclusion of all other carriers?

A. I know the Government never has employed any other express company to carry their money; that within a short time I have signed a contract, as secretary of the Adams Express Company, with the Government. In that contract it was stipulated that the Adams Express Company assumed all the responsibility for a consideration, and were to forward to all the places of destination.

Cross-Q. 52. Will you be good enough to file with your answer to this question a copy of the contract referred to in your last answer, so that we may see whether the Adams Company has a contract with the Government which excludes all others from participating in that service?

(Counsel for the plaintiff states that he has sent for such contract to the office of the company, and will show it with pleasure to the counsel for the defendant; but as such contract is regarded as
1709 relating to the private concerns of the Adams Express Company, he requests that the same will not be put in evidence as a whole, unless considered necessary to the defendant's case.

To which the counsel for the defense replies that a contract with the Government of the United States, or any of its Departments, in which every citizen has an interest; but nevertheless, on inspection, I may be able to select only portions of the same as relating to the purpose which I have in view. In that case, with the consent of plaintiff's counsel, and during the examination of this witness, I will ask the commissioner to copy at large such portions thereof as my purpose requires, not unnecessarily exposing any of the plaintiff's secrets.)

A. I now produce it.

And the parts of it introduced by defendant's counsel are as follows:

Contract Between the United States and Adams Express Company, February 1, 1879.

TRANSPORTATION OF PUBLIC MONEYS AND SECURITIES.

It is agreed by and between the United States, by John Sherman, Secretary of the Treasury, and the Adams Express Company, by Wm. B. Dinsmore, its president, as follows:

First. The United States hereby agrees to employ the said company as its exclusive agent for the transportation of all moneys and securities belonging to the United States, and to give to it as such agent for transportation all such moneys and securities of every kind which are to be transferred from one point to any other within the territorial limits of this contract.

This exclusive agency shall not be held to include securities in transit from the Treasury Department to the sub-treasury at New York, or from the latter to the Treasury Department, which have not become effective by delivery to purchasers.

Second. The United States agrees to pay to said company for such transportation the several sums due from the United States, for which, as hereinafter expressed, the said company undertakes to transport such moneys and securities.

Third. The said company hereby agrees to transport, as hereinafter specified, such moneys and securities upon the terms hereinafter stated, viz:

* * * * * * *

1710 PAPER CURRENCY.

III. All other moneys, including United States notes, United States Treasury notes, bank notes of national banks, complete and incomplete (except notes of national banks going to Washington for redemption), United States fractional currency, and all moneys belonging to the United States Internal Revenue Department, whenever the same may be in transit between any two points in the territory of the Adams Express Company, and reached by it. * * Between any two points in the territory of the Southern Express Company (except to points within the States of Arkansas and Texas), accessible as aforesaid. * * It being understood that the territory of the Southern Express Company includes the States of North and South Carolina, Georgia, Alabama, Mississippi, Louisiana, Texas, Arkansas, Tennessee, and that part of the State of Virginia lying south of Richmond and west of Lynchburg. Between any two points in the State of Texas or in the State of Arkansas, or between any two points severally in those two States respectively reached by the Southern Express Company in manner aforesaid. * *

Between any two points in the territory of another express company than the Adams and Southern Express Companies, reached as aforesaid * * (excepting herefrom incomplete national bank currency en route from the Department at Washington to the banks to which the same may belong, for which the price of transportation is to be to each express). * * Between any two points, one of which is in the territory of one express company and the other within the territory of another express, reached as aforesaid (excepting herefrom the States of Texas and Arkansas). * * Between any two points, one of which is in the State of Texas or Arkansas and the other in any of the other States. * *

CERTIFICATES OF INDEBTEDNESS AND COUPON BONDS.

IV. Certificates of indebtedness and coupon bonds, from point to point on the lines of the Adams Express Company, when the transportation is from a point on the lines of the Adams Express Company to a point beyond such lines and on the lines of another express company, the price to be paid shall * * * *

LIMIT OF TERRITORY.

XV. That all the transportation of moneys and securities contemplated by this agreement is to be between points accessible through established express lines reached by continuous railway communication, and that this agreement does not in any manner embrace sea or river transportation of any kind, and does not extend westward beyond Omaha and Nebraska City, in the State of Nebraska, nor beyond Atchison and Leavenworth, in the State of Kansas.

1711 RESPONSIBILITY OF COMPANY.

XVI. That any loss or destruction, total or partial, of the specified moneys or securities while in the course of transportation, occasioned by fire or water, or by the acts of the public enemy, or persons in arms, or by any mob or riotous assemblage, shall be borne by the United States, excepting national bank currency incomplete *in transitu* to a bank, when such loss or damage shall be borne by the bank, and not by the Adams Express Company, or its constituents, unless such loss shall be occasioned by the misconduct or neglect of the company, its officers or servants. * * *

In case of the loss or destruction of any moneys or securities while being transported under this contract, except as hereinbefore in this section or otherwise provided for, said Adams Express Company shall be liable as common carriers to the United States for the face valuation thereof; provided, that the said company shall, upon discharging such liability, be treated as the owners of such moneys and securities, and entitled to the rights and remedies appertaining to other owners of lost or destroyed moneys or securities; and further provided, that if any portion of the incomplete national bank currency notes which may be lost and paid for by the said Adams Express Company shall be thereafter recovered, the said company shall, upon presentation thereof, be entitled to receive from the United States the amount of such notes so recovered and presented at their face valuation.

TERMINATION OF CONTRACT.

XVII. That either party may terminate this contract on thirty days' notice, in writing, to the other party.

ASSIGNMENT OF ROOM.

XVIII. That until such termination there shall be assigned for the exclusive use of the said company, free of expense to it, a room in the Treasury Building at Washington, which shall be under the control of said company, subject to the general regulations of said building, and any delivery of money or securities for transportation to the agents of said company in said assigned room shall be deemed a perfect delivery to said company.

PAYMENTS TO COMPANY.

XIX. That all payments due to said company from the United States for services performed hereunder shall be made monthly at the Treasury Department at Washington, and payments due by banks for transportation of incomplete currency shall be made by the bank on delivery of the same.

This contract to take effect from and after the first day of February, anno Domini eighteen hundred and seventy-nine.

1712 In testimony whereof, the parties hereto have hereunto set their hands and seals, this first day of February, anno Domini eighteen hundred and seventy-nine.

JOHN SHERMAN,
Sec'y of the Treas'y.
W. B. DINSMORE,
President.
J. M. THOMPSON,
Sec'y Adams Ex. Co.

Witness signature of J. M. Thompson—
FRANCIS H. FOSTER.

Sealed and delivered in the presence of—
D. B. BARNUM.
C. M. HAY.

Cross-Q. 53. Does the Adams Express Co., or any other express company or carrier, regulate their charges for services rendered to their patrons by the charter or tariff rates of the railroad companies over whose lines they carry, or did they ever do so?

A. Not to my knowledge. I don't know anything about it.

Cross-Q. 54. Is the Adams Express, or any other express company, that you know of, required by any law to make report to any legal authority of its or their assets or gross or net earnings, or of any of its operations whatever?

A. I don't know of any such law.

Cross-Q. 55. Does the Adams Express Co., at stated or other periods, through its officers, make reports to stockholders of its operations, showing gross or net earnings, or either?

A. No.

Redirect:

R. D. 56. Will you produce a form of the certificate of shares issued by the Adams Express Co. to shareholders therein?

A. I produce one which is a canceled one, but the language which I believe corresponds to those issued since the increase to 120,000 shares, the 100 in the present certificate being changed to 120. The rest of the print I believe has not been changed.

JOINT STOCK ASSOCIATION,
Office No. 59 Broadway, New York.

No. —. ADAMS EXPRESS COMPANY. Shares —.

This certifies that ——, of ——, entitled to —— share of stock in the Joint Stock Association of the Adams Express Company, transferable only on the books of the association in 1713 person or by attorney, with the approval of at least two of the managers, and on surrender of this certificate. The holder of each share is subject to the payment in future of such assessments as may be necessary in cases of loss or other necessity, and to all the obligations and liabilities and entitled to all the privileges of a member of the association, and resting on each share represented by this certificate, as fully as if —— had signed the articles of association. No transfer of shares can be made or allowed or be legal if any assessment or contribution shall have been called for by the managers and shall at the time be unpaid.

In witness whereof, the said association have caused this certificate to be signed by the president, secretary, and treasurer, this —— day of ——, 18—.

—— ——,
President.

—— ——,
Secretary.

—— ——,
Treasurer.

(100,000 shares.)

This certificate only entitles the owner to participation in the profits and assets of the association from May 1, 1866.

J. M. THOMPSON.

JOSEPH GUTMAN, JR.,
Commissioner.

Subscribed and sworn to before me, this 31st August, 1880.

N. PENDLETON SCHENCK,
Notary Public, Kings Co. Court, in N. Y. Co.

HENRY V. POOR, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by MR. SEWARD, of counsel for complainant, deposes and says as follow:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Henry V. Poor; my age is 67 years; I live in Brookline, Mass., but conduct my business in New York, and my occupation editor and publisher of The Manual of the Railroads of the United States.

Q. 2. How long have you published such manual?

A. The present number for 1880 is the 13th annual number.

Q. 3. From what sources are the data contained in such manual compiled?

1714 A. From information supplied by each company severally. A part of it furnished directly, and a part of it obtained from statements made to the Legislatures of States or to railroad commissioners; the truth of such statements being verified by the oaths of the officers making them.

Q. 4. Do such statements and such manuals show the corporate name of the railroads, the length thereof, the sources of their revenue, and nature of their indebtedness?

A. They do in all cases, except where information is refused, which is very rarely the case.

Q. 5. Are the receipts or the revenue derived by any railway company from what is known as the express business given in such manual?

A. They are in almost every case of importance. I will say that as published in the Manual, for the sake of abbreviation, receipts from express companies and receipts for the transportation of mails are usually given under one heading. The amount for express can be ascertained by deducting charges for transportation of mails, which is a fixed sum per mile, according to the classes of the roads.

Q. 6. Will you please look at the Manual for 1880, and state the names of all the railroads therein appearing which show a return or revenue from the express business, the amount of such revenue, the length of such railroad, and for what period such revenue is shown?

(The defendant excepts to the foregoing question, and objects to the witness answering or reading from his book, because such testimony is incompetent, is based upon hearsay, and not upon facts within the personal knowledge of the witness, or of which he has such information as enables him legally to testify.)

A. The number of companies making returns specifically of receipts from express are 217. I herewith annex a schedule of various companies whose return, made either in answer to information sought by myself or in official reports of companies, or in reports made and verified by oath of their officers to legislative bodies or to boards of railway commissioners or commissioner. This schedule
embraces 217 roads lying within 29 different States, having a
1715 mileage 57,585 miles. The earnings for the transportation
of express matter for 1878 or 1879 was $7,414,594; the total number of miles of railroad line in operation in the United States at the close of 1879 was 84,233 miles.

Q. 6*. Does your schedule show any other, and, if so, what, facts in relation to the transportation of the particular railroads to which the schedule refers, or to the compensation which such companies received therefor?

A. It shows the amount of mail pay received by the several roads for the same year as the receipts for the express business.

Q. 7. Will you state the amount?

A. The amount of mail pay received by the several companies named in the schedule was $8,395,566.

Q. You have given the express receipts for 57,585 miles out of the gross mileage in the United States of 84,233 miles, can you estimate approximately of the data given a fair sum as the compensation received by the remaining 26,648 miles of railroad for the express service?

A. I will submit an estimate in answer to this question.

Cross-examined by Mr. BARNETT:

Cross-Q. 9. Have you any personal knowledge as to the accuracy or truthfulness of the returns from which your book and this schedule are complied?

A. I will state the book and the schedule herewith annexed are compiled from returns made by the several companies. I have no means of knowing whether these returns are truthful or not.

Cross-Q. 10. Have you ever made any effort to secure like returns from the express companies in the United States, or from any of them; and, if any, with what success?

A. I never have made any effort to obtain information from any express company of its business over any railroad.

Cross-Q. 11. Is your book a private enterprise, published on your own responsibility, and not under legal authority? And what is the purpose of its publication?

A. It is a private enterprise; published for the purpose of
1716 diffusing correct information in reference to the financial condition of railroads. It is not published under any legal authority.

Redirect:

R. D. 12. Is there any other book in relation to railroads published in the United States which contains the full statistical information which you give?

A. There is no other work of the kind.

R. D. 13. Have you not, in compiling the same, obtained your information from what you believed to be authentic sources?

A. I have, in all cases.

R. D. 14. Is not the book a standard volume of reference in the United States in regard to matters which it embraces?

A. I believe it to be such.

HENRY V. POOR.

Sworn to before me—

JOSEPH GUTMAN, JR.,
Commissioner.

[J. G., Jr., *Comm'r.*]

Statements Showing the Receipts by Certain Railroad Companies of the United States for the Transportation of Express Matter and of Mails, as per Return last Received, but all for the years 1878 or 1879, According to the Date of the Returns.

Name of Railroad.	Mileage of Same.	Earnings from Exp'ss Mat.	Earnings from Mails.
Maine—			
Atlantic and St. Lawrence	149	$14,154	$20,909
Bangor and Piscataquis	62	1,350	3,590
European and North American	114	6,366	19,554
Knox and Lincoln	49	3,047	5,332
Maine Central	354	40,971	48,627
Portland and Ogdensburgh	94	3,000	9,575
Portland and Rochester	52	2,000	7,441
Somerset	25	641	1,222
Totals	899	$71,529	$116,250
New Hampshire—			
Boston, Concord and Montreal	166	$6,043	$3,346
Cheshire	64	6,304	8,145
Concord	141	13,750	12,115
Manchester and Lawrence	30	6,042	3,346
Northern	82	7,500	14,135
Totals	483	$39,639	$41,087
1717 **Vermont—**			
Bennington and Rutland	59	$4,009	$5,116
Central Vermont	431	45,627	104,695
Connecticut and Passumpsic	147	8,042	18,125
Totals	637	$57,669	$127,936
Massachusetts—			
Boston and Albany	324	$182,062	$80,523
Boston, Barre and Gardner	52	4,179	3,974
Boston, Clinton and Fitchburg	152	16,634	9,659
Boston and Lowell	87	20,012	8,785
Boston and Maine	206	58,561	24,446
Boston and Providence	68	33,426	9,805
Connecticut River	80	14,051	10,857
Eastern	282	65,471	41,104
Fitchburg	189	27,582	30,912
Nashua and Lowell	54	8,991	3,947
New York and New England	263	48,704	15,947
Old Colony	302	72,827	30,527
Providence and Worcester	67	11,599	4,310
Springfield and North-Eastern	48	1,093	2,780
Worcester and Nashua	94	8,401	14,483
Totals	2,268	$573,393	$292,059
Rhode Island—			
New York, Providence and Boston	62	$24,015	$10,941
Totals	62	$24,015	$10,941

NAME OF RAILROAD.	Mileage of Same.	Earnings from Exp's Mat.	Earnings from Mails.
CONNECTICUT—			
Boston and New York Air Line	54	$3,804	$3,194
Connecticut Central	35	302	1,906
Connecticut Valley	46	2,156	3,272
Connecticut Western	68	3,062	5,671
Danbury and Norwalk	38	3,600	2,426
Housatonic	126	12,000	11,505
Hartford, Providence and Fishkill	184	15,420	10,082
Naughatuc	61	10,500	6,208
New Haven and Northampton	109	12,000	11,669
New Haven and Derby	18	1,258	671
New London and Northern	100	6,218	7,789
New York, New Haven and Hartford	202	161,882	104,449
Norwich and Worcester	66	17,881	5,141
Totals	1,047	$257,578	$178,898
NEW YORK—			
Buffalo and Southwestern	67	$2,782	$3,553
Buffalo, New York and Philadelphia	120	10,504	8,510
Dunkirk, Allegheny and Pittsburg	90	1,840	4,618
Long Island	326	27,978	21,540
New York Central and Hudson River	1,018	563,027	494,448
New York, Lake Erie and Western	928	321,023	162,569
1718 New York, Ontario and Western	344	10,727	18,250
Ogdensburgh and Lake Champlain	122	5,900	9,372
Rome, Watertown and Ogdensburgh	409	34,257	34,949
Southern Central	114	8,036	9,588
Syracuse, Binghampton and New York	81	24,000	6,688
Utica and Black River	180	9,528	10,861
Ulster and Delaware	74	3,485	3,928
Utica, Chenango and Susquehanna Valley	97	9,977	6,281
Totals	3,950	$1,082,164	$795,654
NEW JERSEY—			
Camden and Atlantic	67	$26,648	$3,745
Morris and Essex	118	81,095	14,316
United R. R. of New Jersey	404	235,064	131,128
West Jersey	128	46,014	9,025
Totals	717	$388,821	$158,214
PENNSYLVANIA—			
Alleghany Valley	259	$16,826	$21,016
Cumberland Valley	82	8,647	6,678
Lehigh Valley	298	23,978	24,199
Northern Central	322	59,647	42,741
North Pennsylvania	88	6,778	4,786
Pennsylvania	1,092	309,798	352,155
Philadelphia and Reading	892	59,099	44,944
Philadelphia and Erie	287	31,276	26,607
Pittsburg, Titusville and Buffalo	120	8,878	6,288
Philadelphia, Wilmington and Baltimore	112	64,854	49,048
Delaware, Lackawanna and Western	207	33,510	17,541
Delaware and Hudson	155	1,882	2,697
Pittsburg and Connellsville	174	40,513	13,290
Totals	4,083	$665,681	$611,832

NAME OF RAILROAD.	Mileage of Same.	Earnings from Exp'ss Mat.	Earnings from Mails.
VIRGINIA—			
Atlantic, Ohio and Mississippi	428	$48,753	$46,775
Chesapeake and Ohio	437	25,439	36,618
Richmond and Danville	200	13,550	20,450
Richmond and Petersburg	25	3,077	7,505
Richmond, Fredericksburg and Potomac	80	18,535	32,797
Totals	1,170	$109,354	$144,145
NORTH CAROLINA—			
North Carolina	223	$13,550	$20,450
North Western	25	446	1,428
Wilmington and Welden	180	8,023	28,466
Totals	428	$22,039	$50,344
SOUTH CAROLINA—			
Atlanta and Charlotte	269	$14,899	$35,454
Charlotte, Columbia and Augusta	195	5,787	21,386
Cheraw and Darlington	40	617	1,747
1719 Greenville and Columbia	165	5,192	10,006
North Eastern	106	4,808	15,192
Port Royal and Augusta	112	1,597	5,468
Savannah and Charleston	115	4,188	16,064
South Carolina	243	9,209	15,518
Spartenburg, Union and Columbia	69	770	2,874
Wilmington, Columbia and Augusta	189	4,735	21,792
Totals	1,503	$51,802	$145,496
GEORGIA—			
Atlanta and West Point	80	$6,042	$11,561
Georgia	231	96,629	32,042
Totals	311	$102,671	$43,603
ALABAMA—			
Mobile and Ohio	507	$42,012	$27,642
Memphis and Charleston	310	13,058	26,430
Nashville and Decatur	122	12,000	13,165
South and North Alabama	189	12,000	16,546
Totals	1,128	$79,070	$83,683
MISSISSIPPI—			
Mississippi and Tennessee	100	$2,403	$6,823
Totals	100	$2,403	$6,823
TEXAS—			
Galveston, Harrisburg and San Antonio	214	$14,304	$21,630
Houston and Texas Central	553	44,970	54,689
International and Great Northern	529	18,000	52,446
Texas and Pacific	444	20,338	58,906
Totals	1,740	$97,612	$187,671
TENNESSEE AND KENTUCKY—			
East Tennessee, Virginia and Georgia	272	$20,317	$40,140
Louisville and Nashville	784	160,962	124,022
Louisville, Cincinnati and Lexington	232	20,379	*22,389
Totals	1,288	$201,658	$186,551

*Nine months for 1878.

NAME OF RAILROAD.	Mileage of Same.	Earnings from Exp'ss Mat.	Earnings from Mails.
OHIO—			
Atlantic and Great Western	512	$48,268	$46,780
Baltimore and Ohio and Chicago	270	81,885	66,010
Central Ohio	188	29,617	24,673
Cincinnati, Hamilton and Dayton	59	11,260	8,878
Cincinnati, Hamilton and Indianapolis	98	4,588	5,781
Cincinnati and Indiana	194	80,412	58,721
Cincinnati and Muskingum Valley	148	5,000	8,471
Cincinnati, Richmond and Chicago	42	6,784	8,658
1720 Cincinnati, Sandusky and Cleveland	190	22,200	9,600
Cincinnati and Springfield	80	97,800	189,647
Cleveland, Columbus, Cin. and Indianapolis	391		
Cleveland, Mt. Vernon and Delaware	156	12,480	11,225
Cleveland and Pittsburg	225	40,488	25,786
Columbus, Chicago and Ind. Central	580	64,977	122,286
Columbus and Hocking Valley	104	10,082	5,067
Columbus and Toledo	128	10,080	5,889
Dayton and Michigan	140	19,071	15,645
Lake Shore and Michigan Southern	1,176	201,696	517,446
Little Miami	196	47,444	54,878
Marietta and Cincinnati	312	50,361	55,088
Ohio and Mississippi	615	86,869	94,041
Pittsburg, Cincinnati and St. Louis	200	68,787	162,076
Pittsburg, Ft. Wayne and Chicago	468	148,824	181,580
Sandusky, Mansfield and Newark	116	21,290	21,027
Wabash, St. Louis and Pacific	1,301	85,545	145,875
Totals	7,834	$1,150,686	$1,789,868
INDIANA—			
Evansville and Terre Haute	108	$12,000	$9,964
Evansville and St. Louis	266	18,095	41,522
Jeffersonville	185	25,529	20,774
Terre Haute and Indianapolis	118	16,887	34,119
Totals	662	$72,461	$106,279
MICHIGAN—			
Chicago and Canada Southern	67	$978	$8,514
Chicago and Lake Huron	282	2,085	10,568
Detroit, Grand Haven and Milwaukee	192	15,650	19,140
Flint and Pere Marquette	307	11,204	20,861
Grand Rapids and Indiana	332	17,289	17,142
Jackson, Lansing and Saginaw	236	6,488	12,516
Marquette, Houghton and Ontonagon	86	1,188	3,418
Michigan Central	804	128,888	110,620
Michigan Lake Shore	246	9,782	18,287
Northern Central Michigan	61	452	3,097
Toledo, Canada Southern and Detroit	55	4,978	5,424
Totals	2,668	$198,278	$224,527
ILLINOIS—			
Cairo and Vincennes	157	$4,485	$10,182
Chicago and Alton	840	98,547	91,840
Chicago, Burlington and Quincy	1,857	142,275	184,227
Chicago and Eastern Illinois	152	15,600	10,894
Chicago and Iowa	104	4,942	9,557
Chicago and Northwestern	2,129	255,650	261,422
Chicago and Paducah	164	1,240	7,840
Chicago, Rock Island and Pacific	1,125	109,550	148,225
Cincinnati, Lafayette and Chicago	56	6,868	21,115
Illinois Central	885	115,508	102,190
Illinois Midland	176	3,180	8,997
Indiana, Bloomington and Western	202	7,214	28,170

Name of Railroad.	Mileage of Same.	Earnings from Exp'ss Mat.	Earnings from Mails.
1721 Indianapolis, Decatur and Springfield	153	$1,766	$4,900
Indianapolis and St. Louis	267	20,168	33,642
Lafayette, Bloomington and Mississippi	81	3,339	3,469
St. Louis, Alton and Terre Haute	125	5,118	8,544
St. Louis, Rock Island and Chicago	287	17,084	17,437
St. Louis, Vandalia and Terre Haute	158	34,513	68,262
St. Louis and South-Eastern	208	20,097	23,049
Toledo, Peoria and Warsaw	247	12,520	16,612
Totals	9,843	$879,564	$1,044,524
Wisconsin—			
Chicago, Milwaukee and St. Paul	1,996	$172,502	$177,843
Chicago, St. Paul and Minneapolis	178	19,050	11,848
Green Bay and Minnesota	219	1,687	11,253
Milwaukee, Lake Shore and Western	159	1,810	10,089
Western Union	213	10,195	9,398
Wisconsin Central	456	8,064	22,596
Wisconsin Valley	108	1,038	4,081
Totals	3,329	$214,346	$247,098
Iowa—			
Burlington, Cedar Rapids and Northern	425	$24,225	$24,679
Burlington and Southwestern	142	3,446	8,159
Central Iowa	191	6,964	9,569
Chicago, Clinton, Dubuque and Minn.	208	3,218	14,031
Des Moines and Fort Dodge	84	3,704	4,085
Des Moines and Minneapolis	57	2,027	2,566
Illinois Central (leased lines)	403	21,127	32,505
Kansas City, St. Joseph and Council Bluffs	254	18,505	32,390
Keokuk and Des Moines	162	14,459	12,367
Sioux City and Pacific	218	2,753	7,102
Sioux City and Pembina and D. S.	113	2,588	5,504
Sioux City and St. Paul	147	5,583	7,346
Totals	2,404	$108,599	$160,253
Minnesota—			
Central of Minnesota	40	$853	$1,404
Minneapolis and Duluth Minneapolis and St. Louis	123	5,106	11,508
Northern Pacific	510	10,269	19,971
St. Paul and Duluth	169	3,741	10,140
St. Paul, Minneapolis and Manitoba	657	25,115	12,685
St. Paul and Sioux City	121	6,875	8,892
Southern	167	10,864	7,930
Worthington Falls and Sioux City	58	1,374	2,915
Winona and St. Peter	327	7,296	12,818
Totals	2,173	$71,493	$88,263
Nebraska—			
Union Rapids	1,042	$360,841	$596,775
Totals	1,042	$360,841	$596,775
1722 Missouri—			
Hannibal and St. Joseph	292	$30,350	$48,463
Missouri, Kansas and Texas	808	54,775	112,073
Missouri Pacific	422	92,198	103,019
St. Louis and Iron Mountain	684	65,309	106,529
St. Louis and San Francisco	527	25,041	28,427
Totals	2,733	$267,673	$398,511

Name of Railroad.	Mileage of Same.	Earnings from Exp'ss Mat.	Earnings from Mails.
Kansas—			
Atchison, Topeka and Santa Fe	997	$56,085	$85,456
Kansas City, Ft. Scott and Gulf	191	13,500	11,713
Kansas City, Lawrence and Southern	289	18,500	9,350
Totals	1,477	$88,085	$106,519
Arkansas—			
Little Rock and Fort Smith	165	$7,126	$9,959
Totals	165	$7,126	$9,959
California—			
Central Pacific	1,941	$286,908	$488,800
Totals	1,941	$286,908	$488,800

SUMMARY.

States.	Mileage.	Earnings from Exp. Matter.	Earnings from Mail Matter.
Maine	899	$71,529	$116,250
New Hampshire	483	39,639	41,067
Vermont	687	57,669	127,986
Massachusetts	2,268	578,593	292,059
Rhode Island	62	24,015	10,941
Connecticut	1,047	257,578	178,898
New York	3,950	1,082,164	795,654
New Jersey	717	388,821	158,214
Pennsylvania	4,083	665,681	611,882
Virginia	1,170	109,354	144,145
North Carolina	428	22,089	50,844
South Carolina	1,508	51,802	145,496
Georgia	811	102,671	48,608
Alabama	1,128	79,070	88,688
Mississippi	100	2,408	6,828
Texas	1,740	97,612	187,671
Tennessee and Kentucky	1,288	201,658	186,551
Ohio	7,834	1,150,686	1,789,868
Indiana	662	72,461	106,279
Michigan	2,668	198,278	224,527
Illinois	9,843	879,564	1,044,524
Wisconsin	3,829	214,846	247,098
Iowa	2,404	108,599	160,253
1723 Minnesota	2,178	71,498	88,263
Nebraska	1,042	860,841	596,775
Missouri	2,733	267,678	898,511
Kansas	1,477	88,085	106,519
Arkansas	165	7,126	9,959
California	1,941	286,908	488,800
Totals	57,585	$7,414,594	$8,895,566

The number of companies embraced in the above statement is 217.

There are also contained in the Manual returns from 229 other companies, embracing 18,763 miles of railroad, in which the earnings for the transportation of mails and express matter are not separated. This leaves 7,985 miles of railroad where no statement of express earnings is made. I estimate the express earnings for the 26,748 miles of road, where no division is made, at $1,000,000.

HENRY V. POOR.

NEW YORK, *August* 27, 1880—10 a. m.

Present: Counsel as before.

WILLIAM L. HUBBELL, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by Mr. SEWARD deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is William L. Hubbell; I am 47 years old; I reside at Bridgeport, Conn.; I am in the express business.

Q. 2. In what express?

A. The Adams Express Company.

Q. 3. In what division?

A. The New England division.

Q. 4. Can you state the names of the different railroads over which the business of the express company is conducted, and what compensation is paid to the railway companies therefor?

A. Yes, sir. The New York, New Haven and Hartford R. R.; the Boston and Albany; the New York, Providence and Boston R. R.; the Boston and Providence R. R.; the New York and New England R. R.; the New Canaan R. R.; the Danbury and 1724 Newall R. R.; the Housatonic R. R.; the Nangatuk R. R.; the Boston and New York Air Line R. R.; the Connecticut Central R. R.; the New Haven and Northampton R. R.; the Newport and Witchfield R. R. and steamboat; the New Haven and Derby R. R.; the New London and Northern R. R.; the Connecticut Valley R. R.; the Connecticut Western R. R.; the Shepang R. R.; the Narrangansett Pier R. R.; the Oakland Beach R. R.; the Newport and Narragansett Pier Steamboat Line. Several of these roads have branches and leased lines connected with them. We have one entire car that is run between New York and Boston, each way, over the New York, New Haven and Boston and Boston and Albany roads via Springfield, distance, 234 miles, for which we pay $108 per car. We have a part of a car between New York and Boston over the New York, New Haven and Hartford, the New York, Providence and Boston, and the Boston and Providence roads, called the Shore Line Route—the car is run each way daily, for which we pay $3,000 per month. We send freight between Jersey City and Boston via Harlem river, over the New York, New Haven and Hartford R. R., the New York and New England R. R., and the New England Transfer Co., a distance of about 232 miles. Between Jersey City and Harlem river we pay 7½ cents per 100 lbs.; between Harlem river and Boston we pay 60 cents per 100 lbs.; between Harlem river and New Haven we pay 22 cents per 100 pounds. That includes any thing we may have for an intermediate point, Bridgeport being the only place where freight is cut. Between Harlem river and Hartford we pay 32 cents per 100 lbs. The New York and New England R. R. includes the following lines or branches of road: Boston to Waterbury, 150 miles; Brooklin to Woonsochat, 33½ miles; Norwich to Worcester, 59 miles; East Thompson to

Southbridge, 17½ miles; Vernon to Rockville, about 4½ miles; Providence to Willimantic, 58½ miles; Franklin to Valley Falls, 14 miles; New London to York, via steamer, about 123 miles, making a total of about 460 miles. We have one entire car between Boston and New London, with an equivalent space on the steamboat line between New London and New York. We have twenty lineal feet of space in baggage car between Worcester and
1725 New London, or its equivalent of 1,280 cubic feet of space, and an equivalent space on the boats between New London and New York. We have twenty feet of lineal space, or its equivalent of 1,280 cubic feet of space by night express train between Boston and Hartford. We have one entire car, or its equivalent of 1,920 cubic feet of space between Boston and Providence via Franklin. We also have space on three other trains between Boston and Providence, and the right to fifteen lineal feet of space, or its equivalent of 960 cubic feet of space in all other passenger trains of that road. Our agreement also provides that if a second passenger line should be run between Boston and New York via Allyn's Point, we should, if required, be entitled to twenty lineal feet of space, or its equivalent of 1,280 cubic feet of space by that line—that line is sometimes used in the summer season. We pay $110,000 per annum for this. On the New York, New Haven and Hartford R. R., for local business, we have one entire car each way daily, Sunday excepted, between New York and Springfield. We have fifteen lineal feet of space on three trains each way between New York and New Haven, 74 miles; fifteen lineal feet on two trains each way between New Haven and Springfield, 62 miles; twelve lineal feet of space on three trains each way between New Haven and New London, 50 miles; eight lineal feet of space on one train between New York and Stamford; eight lineal feet on four trains each way between New Rochelle and Harlem river, 12½ miles; eight lineal feet on two trains each way over the Middletown branch road, about 10 miles; eight lineal feet on two trains each way over the New Britain branch road, about 2 miles; eight lineal feet on two trains each way over the Suffield branch road, about 4 miles. Our contract rate for this is $100,000 per annum for the express business proper. The New Canaan R. R. is about 8½ miles. I believe we run four times each way over that road, and pay $100 per annum. The Danbury and Norwalk R. R. and the branch to Ridgefield is about 28 miles; we run two trips each way and pay $3,600 per annum. The Housatonic R. R. is 100 miles; we run two trips each way and pay $1,200 per annum. The Naugatuck R. R. is about 62 miles; we run two trips each
1726 way daily and pay $10,500 per annum. The Boston and New York Air Line R. R., with the Colchester branch, is about 58 miles, and we pay $3,600 per annum. Our contract gives the right to thirteen lineal feet of space on all passenger trains; we now cover, I believe, three trains each way. The Connecticut Central R. R., with the Rockville branch, is about 42 miles; we run two trains each way and pay $1,200 per annum. The New Haven and Northampton R. R., which we run between New Haven, Conn., and Westfield, Mass., with the Farmington branch, is about 74½

miles; we run on three trains each way daily, and pay for our proportion $7,875 per annum. The Adams Express Company pay the New Haven and Northampton R. R. $12,000 per annum. This covers the entire express privilege of the road, which above Westfield, Mass., is covered by the American Express Company, and the portion which the American Express Company pays, through the Adams, amounts to $4,125 per annum, leaving the Adams Express Company's proportion as first stated. The Newport and Wichfield R. R. and Steamboat Line is about 16 miles; we pay on that line 20 cents per 100 lbs. The New York, Providence and Boston R. R. is 64 miles; we pay 40 per cent. of the gross freight receipt, and guarantee $7,500 per annum on an average for five years. The New Haven and Derby R. R. is about 13 miles; we pay 40 per cent. of the gross receipts for freight. The New London and Northampton R. R., over which we run between New London, Conn., and Palone, Mass., is 55 miles; we pay 40 per cent. of the gross receipts. The Connecticut Valley R. R. is 44 miles; we pay 40 per cent. of gross receipts. The Connecticut Western R. R. is 68¾ miles, and we pay 40 per cent. of the gross receipts. The Shepang R. R. is about 32 miles, and we pay 40 per cent. of gross receipts; the Narregansett Pier R. R. is about 8½ miles, and we pay 40 per cent. of gross receipts. The Oakland Beach R. R., 50 per cent. of gross receipts. Boston and Albany R. R., between Boston and Worcester, 44 miles; between South Farmington and Milford, 12 miles; between Notich and Saxonville, 4 miles. I believe we run four trips each way between Boston and Worcester, or three trains each way between Bos-
1727 ton and Milford; two trains each way between Boston and
Saxonville, for which we pay $35,000 per annum. On the Newport and Narragansett Pier Steamboat Line, about 9 miles long, we run during the summer months, and pay $50 per month.

On the line from Jersey City to Boston, the company pays for the transportation of fruit between those points, 60 cents per 100 lbs.

Cross-Q. 5. What railroads, if any, in your division or in your knowledge, are doing their own express business. If any, say the length of lines and how long.

A. I can recall no positive knowledge of such roads within the limits of the New England division. The express business on the Providence and Worcester railroad, some 43 miles, is done under the name of the Providence and Worcester Railroad Express. The precise status of the business I cannot explain. I do not now recall the names of any such roads outside of the northeastern division.

Cross-Q. 6. Are rates of charges fixed by law, either as to railroad or express carrying in your division?

A. Not to my knowledge.

Cross-Q. 7. Are railroads or express carriers required by law in your division to report to any public authority at stated periods, their investments, earnings, net or gross, or other kind of report showing to the public their operations? If such reports are required, say to what authority.

A. Railroads are required, I believe, to make reports to State authorities. Express companies are not, to my knowledge.

Cross-Q. 8. Do any two or more express companies operate the lines of any railroad in your division for full express purposes? If any, say which and where.

A. No, sir; not if I understand the question correctly. In some instances one company conducts the local business while another company does a through business.

Cross-Q. 9. Is this division of business the result of agreement between the two companies?

A. It is; between the Adams and American Express Companies, when they cover lines in this way.

W. L. HUBBELL.

Subscribed and sworn to, before me—

JOSEPH GUTMAN, JR.

1728 GEORGE S. COE, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn, to testify to the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by Mr. SEWARD, counsel for complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. My name is George S. Coe; I am 63 years old; I reside at Englewood, N. J.; I am president of the American Exchange National Bank, of the city of New York, and have been such for the past 20 years.

Q. 2. Are you connected with any other banking institution or organization?

A. I am connected with the New York Clearing-House Association, and have been for some 25 years, and also with the American Bankers' Association, as chairmon of its executive council.

Q. 3. Will you please specify what are considered to be the principal financial points or centers in this country?

A. Boston, Philadelphia, New York, Chicago, Cincinnati, New Orleans, San Francisco, and some other intermediate cities. St. Louis, St. Paul, Washington.

Q. 4. Are the moneys and currency and coin of the country continually flowing backwards and forwards between these centers and other points?

A. They do fluctuate like the rising and falling of the tide, but not with the same exact regularity.

Q. 5. Are there any, and, if so, what, kind of financial transactions or exchanges between the national banks and the Treasury Department at Washington?

A. The Treasury Department in Washington is the center of redemption for national banks, and for this purpose bank notes and Government notes are continually going backward and forward between them.

Q. 6. Is there any passing of actual money in notes or coin between one bank and another.

A. There is continually, and in very large amounts.

1729 Q. 7. Does your bank send currency to Washington for redemption, and does it receive and send moneys from and to other banks in other places?

A. It does do so daily and in very large sums.

Q. 8. In making shipments for redemption, and in the transportation of moneys to and from banks and bankers in other places, what instrumentality does your bank habitually use?

A. We use the express companies exclusively.

Q. 9. How long have such companies been so used?

A. These companies began to be used, to the best of my recollection, as early as 1840, and have increased in the magnitude and value of their service with the growth of the country since that time.

Q. 10. Prior to 1840, how would a bank have sent, for illustration, a package of $50,000, in various bills of the New England banks to the city of Boston?

A. There was great difficulty in doing it. I well remember that brokers at that period, who handled large sums of bank notes, were compelled themselves, or by their clerks, to transport bank notes or to intrust them to the hands of friends passing, on their own business, to the points named.

Q. 11. Why does your bank send and receive the moneys through an express company and not by mail or by a railroad company?

A. First, because it is the most expeditious mode of transportation; second, because, from the nature of the business, express companies are more careful in the custody and in the delivery of valuable articles intrusted to them, and third, because they have large capital and furnish an ample guarantee for the fidelity of their service. Mail is objectionable as being unsafe, and railroads are also unsafe, in the fact that they cannot give that precise attention that secures the safety of the business.

Q. 12. What would be the effect upon the banking and financial interest of the country at large if the express service and organization were suddenly and at once obliterated?

A. The effect would be most disastrous. It would deprive it of a facility for making financial exchanges, and safely transport-
1730 ing securities, such as bonds, stocks, and coin, which are indispensably necessary to the current business of the country.

Q. 13. In case of a loss of money by mail, is it the usage of the Government to make good the loss?

A. It is not. I understand that the registered letter involves no responsibility for the Government to reimburse the sender, but simply gives special care in tracing letters sent by it.

Q. 14. Do you know the general financial condition of the railway companies of the country with reference, for illustration, to bonded indebtedness?

A. I answer yes, in general terms, but not specifically.

Q. 15. Is it not a well understood fact that nearly all the railways of the country are incumbered by a mortgage debt?

A. It well understood.

Q. 16. Assuming the destruction by fire, or the loss by theft, of a trunk or safe, containing, for illustration, $5,000,000 while in the exclusive custody of a railway company, can you state how many of such railway companies would be accredited to promptly pay such loss?

A. I cannot state numerically, but it is safe to state they are very few. Such a loss would create immediately complications between bondholders and stockholders and claimants, that would make the restitution of the amount lost of very doubtful result.

Q. 17. Does your bank sell drafts or exchange upon any of the Western cities?

A. No; it is not the practice of banks in New York to draw upon Western cities. Banks in New York are depositaries of Western cities, and are drawn upon almost exclusively.

Q. 18. Do you know whether the Western banks in such cases charge the customer for such draft, and, if so, at what rates from such points as you may designate?

A. I can answer the question only in general terms by stating
that New York city, like London, is the financial center where the
trade of the country converges, and the exchanges are made.
1731 As a general fact, money in New York is at a premium, more
or less, changing with the various periods of the year at all
the interior cities heretofore named.

Q. 19. Do you know if I should be in St. Paul, Minn., and should desire to buy for the purpose of transmission to the city of New York a draft for the sum of $10,000, what the St. Paul bank or banker would charge me for the draft which would give me that sum in this city?

A. I cannot answer that question with precision, but it would vary from ¼ to ½ per cent. premium; that is, that the draft of $10,000 would cost a premium of $25 to $50, varying with the season of the year.

Q. 20. Would the same answer be reasonably true in a similar transaction at St. Louis?

A. It would.

Q. 28. Do you know the rate per $1,000 in currency by express, say from New York to St. Louis?

A. I hold in my hand a list of rates which we pay to express companies to various points in the country—St. Louis, $1.25 per $1,000, which would be $12.50 for $10,000.

Q. 22. Is that rate of charge for express service a just and reasonable charge to the public?

A. I think it is.

Cross-examination by Mr. Barnett:

Cross-Q. 23. Do you know of any railroad company doing its own express business?

A. I do not; there may be some, but I am not aware of it.

Cross-Q. 24. Have you never had occasion to make or receive remittances which had come or would go through, or on to, the express lines of the Baltimore and Ohio Railroad Company?

A. None that came under my personal observation.

Cross-Q. 25. Do you know that all the railroad companies on Long Island, their mileage amounting to about 200 miles, are now doing their own express business?

A. I do not. We have no banking operations with Long Island, and I have had no occasion to possess that information.

1732 Cross-Q. 26. You have spoken of the large capital possessed by the express companies. What is the capital of the principal express companies, or any of them?

A. I understand that the stockholders of the express companies are partners in the business, and are personally liable as such, which insures to parties who intrust property with them a very ample guaranty.

Cross-Q. 27. Is this true as to any company except the Adams?

A. I have supposed it to be true without any special knowledge of these companies generally.

Cross-Q. 28. Do you know anything of the solvency or insolvency of the stockholders in any of these express companies?

A. Not specifically, although I do know that their stockholders are very diverse and embrace large numbers of responsible names. The fact that they are always prompt to pay losses has secured to them the confidence of the business community.

(The last branch of the answer is objected to as not responsive, by defendant's counsel.)

Cross-Q. 29. Are you, or any of your family or immediate relations, interested in any shares in any express company?

A. I am not, and I am not aware that any immediate relative is.

Cross-Q. 30. Suppose the $5,000,000 loss, of which you have spoken in your direct examination, had occurred upon the lines of the defendant between Louisville and Lexington, with not a stockholder in the State of Kentucky to hold responsible for it, do you think the loser would be in a better condition with the individual liabil[it]y of the share-holders of the Adams Express Company, than by having the railroad company responsible therefor, and answerable in all the courts held in that State?

A. I do. I should much prefer the responsibility of the Adams Express Company.

1733 Cross-Q. 31. Suppose you lived at Lexington, Ky., and had sustained the $5,000,000 loss at the hands of the messengers of the Adams Express, how would you reach or ascertain the names of the stockholders, if payment was resisted, in order that you might sue them?

A. That is a legal question. I should take counsel of the best lawyer that I could find, and act upon his advice in the method of discovering the parties responsible.

Cross-Q. 32. Is there any law of the State of New York, or of any other State, as far as you know, that requires any of these express companies to make any report to any legal authority of the names of their share-holders, the amount of capital invested, gross or net earnings, or any information upon which the public could decide whether such companies were or were not to be trusted?

A. I have no exact information on that question.

Cross-Q. 33. Please to give the best information you have.

A. The policy of this State in respect to corporations generally requires them to hold themselves subject to any investigation by a stockholder or party interested. I am not aware whether the express companies are an exception to this rule, and believe they are not. I have had no occasion to investigate this subject for myself.

Cross-Q. 34. If I understand your previous answers, the Adams Express Company is a mere partnership, and not a corporation—the usual distinction between a partnership and a corporation being that the members of a partnership are individually liable for the debts of the concern, while the members of a corporation are not so liable. Do you understand that the laws of New York regulating corporations applies to such partnerships as the Adams Express Company, or other like organizations?

A. That is a legal question which I have never had occasion to investigate; but I suppose they do.

Cross-Q. 35. Are not the shares of the Adams and other express companies sold openly and freely in the market in New York, and what is the present value of the shares of the Adams Express Company?

A. They are sold openly and freely. Their present value
1734 I have no recent occasion to know; but they can be found by
the quotations in the daily newspapers.

GEO. S. COE.

Sworn to before me—

JOSEPH GUTMAN,
Commissioner.

Austin Baldwin, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn, to testify to the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by Mr. Seward, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Austin Baldwin; I am above fifty years old; I reside at New York city; I am in the general shipping business and foreign express.

Q. 2. Are you engaged in any, and if so, what, express business, and how long have you been engaged in such business?

A. In the American-European Express business, upwards of wenty-five years.

Q. 3. Where does such company conduct its business?

A. In New York, No. 53 Broadway, with agencies and correspondents in the principal cities of Europe.

Q. 4. Please name the principal cities in which you have such agencies?

A. London, Liverpool, Hamburg, Bremen, Naples, Rome, Munich, Florence, Berlin, Paris, Havre.

Q. 5. Have you any agency in the Havanas?

A. Also in Havana.

Q. 6. Are there other express companies besides your own which run to the British possessions, or the continent of Europe?

A. About eight or ten.

Q. 7. Does your company ever receive, and if so, in a general way, how frequently, packages of express matter from other express companies in the United States for transmission by you to points beyond the United States?

1735 A. Seldom a day without, excepting Sundays.

Q. 8. Does your company or its agents ever receive in London or on the continent of Europe express matter for points in the United States which are not reached by your express company?

A. More than one-half.

Q. 9. In such latter case what does your company do with the packages?

A. Notifies the parties for whom they are intended, and ask instructions what to do, unless they are for regular clients, then we clear them at once at the custom-house, after getting invoices, and forward them by the express companies to destination.

Q. 10. Do all the express packages coming from Europe to this port have to pass the ordeal of the custom-house?

A. They do.

Q. 11. What acts in reference to such packages, and their being passed through the custom-house, does your company perform?

A. We present the invoices as soon as received, make the necessary affidavits, pay the duties, if any, and take charge of the goods.

Q. 12. In the case of a shipment from this country, for illustration, to Paris, would your representatives in France perform similar duties there, if necessary?

A. They would.

Q. 13. Does your company ever receive, and if so, in a general way, how frequently, packages from Europe or Cuba, for points reached by other express companies in the United States, which are accompanied by a draft, a bill, or instructions to collect on delivery some sum of money?

A. Very frequently.

Q. 14. Are the eight or ten other foreign express companies, to which you have alluded, engaged in a similar business to your own?

A. As far as my knowledge will go, they do.

Q. 15. In case of a C. O. D. shipment, such as is specified in the last 13th question, state what you would do to collect the money?

1736 A. We would clear the goods, make a bill including duties, if any, paid freight and charges for clearance, and, with the amount to be collected, deliver the goods and the documents to an express company for delivery to the consignee upon payment of the bill and the collection.

Cross-examination:

Cross-Q. 16. Does your own or the other foreign expresses receive from and forward to railway expresses who are carrying such matter?

A. We do not. Our express matter received from Europe to be delivered out of the city of New York is delivered to one of the principal express companies in this city, whose line will carry the goods to destination and perform the service which may be required in connection with their delivery.

Cross-Q. 17. Has your express an agency at Baltimore, Maryland?

A. Yes, we have, or always have had; I presume we have now.

Cross-Q. 18. Suppose express matter sent to your Baltimore agency over the Baltimore & Ohio Railroad Express, and designed for some point in Europe, would your express receive and transport it?

A. If our Baltimore agent received for us a parcel to be sent to Europe, it would be sent by him to the express office in Baltimore, coming to this city, from whom we should receive it, and forward it without reference to the means of transportation to him.

Cross-Q. 19. Have you traveled in England?

A. Yes.

Cross-Q. 20. To what extent are you familiar with the transaction of the express business over the railway lines of England? Is the same done by the railway lines themselves or any independent agency?

A. I am quite familiar with the mode of transportation of what we call here express matter through the various parts of Great Britain. They are commonly called—those engaged in that business, I mean—carriers, who collect parcels in the same manner
1737 as our express companies here, and distribute them all over the country, as the express companies do here. If what is meant by the express business is that which is done by the carriers, the question may be considered as answered, as I believe the largest portion of small packages and parcels are distributed by the same kind of agency, only under another name, as the express companies in this country.

Cross-Q. 21. Do the English carriers have messengers on the passenger trains, with their safes and chests, when such express matter is required to pass over the line of a railway company, or is such matter placed in the exclusive control and keeping of the railway company's servants while the property is upon the line of such railway?

(Objected to, as immaterial.)

A. I can only answer that by saying that, to the best of my knowledge and belief, the mode adopted for the care and distribution of matter intrusted to these carriers is very similar to that adopted by the express companies in this country.

Cross-Q. 22. Have you any knowledge as to whether express matter, while being transported over railway lines in England, is intrusted to the exclusive custody of the servants of the railway company or some other person?

A. I am unable to say what the special arrangements are which are made between the carriers and the railway companies.

AUSTIN BALDWIN.

Sworn to before me.

JOSEPH GUTMAN, Jr.,
Commissioner.

PHILIP H. MONAGHAN, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, and nothing but the truth, in the matter of controversy herein, and being examined by Mr. SEWARD, counsel for complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

1738 A. My name is Philip H. Monaghan; I am twenty-seven years old; I reside in New York city; I am shipping clerk with Park & Tilford, Broadway and Twenty-first street, New York.

Q. 2. How long have you been connected in that or any capacity with that firm?

A. Nearly eight years.

Q. 3. What is the business of that firm?

A. Grocers.

Q. 4. What does that term include?

A. Teas, sugars, canned goods, wines, liquors, cigars, and all household goods to supply families.

Q. 5. How many establishments has the firm?

A. Three stores in New York, one agency in Paris.

Q. 6. Has the firm any patrons or customers outside of the city of New York, and in any other; and, if so, what State or States?

A. They have; in every State in the Union.

Q. 7. Does it supply such customers in such other States with groceries from its New York houses?

A. It does.

Q. 8. How are the orders therefor received?

A. Generally by mail; many by telegraph.

Q. 9. Does it fill such orders?

A. It does.

Q. 10. In filling the same does it ever accompany the goods with a bill to be paid on the delivery thereof?

A. Yes.

Q. 11. How frequently does the firm receive orders by mail or telegraph?

A. Daily.

Q. 12. Could you state, in round numbers, if you have no objection to do so, an amount below which the aggregate value of such orders for a week, or a month, or a year would fall?

A. $20,000 per year for goods accompanied by bills.

Q. 13. Does the firm make shipments to parties out of New York which are not accompanied by bills, but are paid for by money remitted or after a given period of credit?

A. They do.

1739 Q. 14. In making these shipments, both with and without a C. O. D. bill, what instrumentality does your firm avail itself of usually?

A. The express companies.

Q. 15. Can you state a few of the more remote points from which you receive orders which are filled by the delivery of the articles ordered to an express company?

A. San Francisco, Omaha, Denver, St. Louis, New Orleans, Galveston, Nashville, Memphis, Cincinnati, and, in fact, all the large cities.

Q. 16. Do you ever collect your bills or accounts other than C. O. D.'s through the express companies?

A. Not within my knowledge.

Q. 17. To what extent are the express companies of value or usefulness to your firm in the conduct of it- business?

A. They being fast carriers of goods.

Q. 18. To what extent are the facilities afforded by the express companies of value in the conduct of your business between your New York houses and customers residing in other States and in the larger cities of the Union?

A. Of such an extent that it would be impossible for us to do business outside of New York without their aid.

Q. 19. When you deliver, for illustration, a package of cigars or wines, destined for a customer at St. Louis, to an express company in New York, how do you get the money?

A. The money is returned to us by an express wagon belonging to the company which has taken away the goods.

(Defendant excepts to the whole testimony, as incompetent and irrelevant.)

P. H. MONAGHAN.

Sworn to before me.

JOSEPH GUTMAN, Jr.,
Commissioner.

Alonzo H. Taylor, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by Mr. Whitfield, of counsel for complainant, deposes and says as follows:

1740 Q. 1. What is your name, age, residence, and business?

A. Alonzo H. Taylor. I reside at Corinth, Mississippi; age, 60 years. I am a banker.

Q. 2. Where do you conduct the banking business?

A. Mississippi—Corinth.

Q. 3. Are you familiar with the means made use of by banks in conducting their business?

A. Yes.

Q. 4. Are the facilities of the express business important to you as a banker? If so, to what extent?

A. We regard them as very important. I don't see how we could do business down in our country without them. We use them in various ways.

Q. 5. State some of the ways in which you make use of them.

A. For conveying currency, money, bonds, and all valuable paper, for making collections, transmitting different values, and in fact we transmit all values by express.

Q. 6. Explain how and under what circumstances you use these facilities for collecting bills and drafts.

A. We use them for collecting and protesting at points where there are no banks.

Q. 7. Does the express company protest paper in proper cases for you when requested, or have it protested?

A. Yes. Not at all points—they do at designated places.

Q. 8. If you had a bill drawn on a merchant at Iuka, Mississippi, for collection, how would you proceed to collect it?

A. I would hand it over to the express agent and take his receipt for it, and instruct him to collect it, with instructions whether to protest it or not.

Q. 9. What would he do with it, according to the usual course of business?

A. He would present it to the party for payment; if not paid, he would protest it or return it, as instructed. If paid, he would return the proceeds to me.

Q. 10. Is there a flow of a great volume of money in any direction at any particular times of the year? If so, in what direction and at what times?

1741 A. There is a large flow of money from the North to the South from New York to our city, commencing in September and ending about the first of February.

Q. 11. For what purpose?

A. Moving the crops of cotton, sugar, rice, and tobacco, grown in the South.

Q. 12. Have you any knowledge of the amount of money brought from the North to the South during that season for moving or purchasing these crops? If so, state it approximately as nearly as you can.

A. I have no actual knowledge; I should approximate it between three hundred and four hundred millions—over that amount.

Q. 13. Is there a flow of money between the North and South at any other period of the year; and, if so, in what direction and how caused?

A. A flow from the South to the North, commencing about April 1 and continuing until August; it is caused by returns made by banks and merchants to the North to keep their balances.

Q. 14. How is all of this money transported?

A. The bulk of it, if not all, by express.

Q. 15. Are there any other conveniences than express afforded the public for the transportation thereof?

A. None that we regard reliable.

Q. 16. Why are not the mails made use of by bankers and merchants for this purpose?

A. Because there is no liability attached, and they are not considered liable for the loss.

Q. 17. Why do you consider the express companies more reliable and responsible than other persons or companies engaged in other transportation between North and South?

A. Because they have always paid all losses promptly.

Q. 18. What sort of a bill of lading will the express company give you, desiring to remit money from your place of business to New York?

1742 (Objected to, as to the contents, or nature, or effect of a bill of lading, unless the same be produced, so that counsel may cross-examine upon it.)

A. Through bill of lading.

Q. 19. What use, if any, does your bank make of the facilities of an express company in your business relations with your New York correspondents?

A. We use them for conveying money both ways.

Q. 20. If express facilities now afforded by the express companies operating between your place of business and New York were withdrawn, do you know of any safe and responsible means of transporting these remittances to which you could resort?

A. I do not.

Q. 21. What would be the effect upon banking business as now conducted in the South, and the general commercial interests of the country South, having the trade relations with the North, as you have said, if the facilities of transporting money by through lines of express were withdrawn?

A. It would clog business so that we could scarcely do business, and it would be almost impossible to move the crops.

Q. 22. What effect would it have upon the amount of money necessary to move the crops?

A. If we have express facilities we can interchange the same money six times over; if we have not, it would take six times as much.

Q. 23. What has been the effect of the facilities of transmitting money by express upon the price of exchange?

A. It has kept the price of exchange much lower. The expense of transmitting money from Corinth to New York by express for the amount of $10,000 is $2.50 per thousand, and we can then draw at one-half per cent., or $5 per thousand. If we had no express facilities, we would have no way of transmitting at these rates; and in remitting we are in the habit of drawing, and can draw immediately after shipment.

Cross-examination:

Cross-Q. 24. What express company have you had in mind in testifying?

A. It is called the Southern Express Company.

1743 Cross-Q. 25. When did that begin business?

A. I can't answer that correctly. I don't know.

Cross-Q. 26. Don't you remember a time when there was no express company in operation in your part of the country?

A. Yes.

Cross-Q. 27. Was there any such business carried on, at that time, in your part of the country, as a banking business?

A. There was, in the State, but none at my place, or near me.

Cross-Q. 28. Do you know anything about the capital stock, or assets, of gross or net earnings of the Southern Express Company? If so, state all you know on these subjects.

A. I do not.

Cross-Q. 29. Is it a corporation or a mere joint stock association?

A. I don't know.

Cross-Q. 30. Does it own any property anywhere, within your knowledge, liable to sale under execution for a liability? If any, say what?

A. I don't know of any property, except the office furniture, within my knowledge. They have an office in our place, and furniture.

Cross-Q. 31. Is the office rented or owned by the company?

A. My understanding is that it is owned. They built it.

Cross-Q. 32. What is it worth, including the furniture?

A. I don't know.

Cross-Q. 33. Do you know the premises?

A. I have seen them, and know them.

Cross-Q. 34. In your judgment, would the property exceed in value $5,000 or $10,000?

A. No, sir.

Cross-Q. 35. Which sum?

A. Neither; the property at Corinth.

Cross-Q. 36. Is there any law that you know of or any custom with the Southern Express Company by which it is the duty of the company to make reports at stated times, either to any public authority or shareholders, as to the capital stock of said company, assets, gross or net earnings, or any other such information as the railroad companies are required to furnish? 1744

A. I don't know anything about it.

Cross-Q. 37. Do you know of any railway company that is doing its own express business over its own line?

A. I do not, of my own knowledge.

Cross-Q. 38. Do you own any shares in any express company?

A. None.

A. H. TAYLOR.

Sworn to before me.

JOSEPH GUTMAN, *Commissioner*.

MICHAEL J. O'BRIEN, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by Mr. SEWARD, counsel for complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Michael J. O'Brien. I am 43 years old. I reside in Augusta, Georgia. I am general superintendent of the Southern Express Company.

Q. 2. Have you had any—and, if so, what—connection with or position in any railroad or express company? And, if so, state fully what the same was.

A. I have been connected in the express business nearly 22 years; filled various positions therein, from that of driver to my present one of general superintendent. Within the past few months I have become interested in a street railroad.

Q. 3. Is there a geographical line of division between the express territory occupied by the Southern Express Company and the other larger express companies in the United States?

A. The Southern Express Company conducts its business in the Southern States, embracing North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Tennessee, and Arkansas; also portions of Virginia, Kentucky, Missouri, and Illinois.

1745 Q. 4. Can you bound this territory on the north by any general east and west line, such as a river or State boundary?

A. On the north by the Potomac river and by the Ohio river.

Q. 5. Does the Southern Express Company interchange express matter going to or coming from points north of this line with any other; and, if so, what express companies?

A. It does; principally with the Adams Express Company and the American.

Q. 6. State the more prominent places at which such interchange is made.

A. With the Adams Express Company, at Richmond, Lynchburg, and Norfolk, Virginia; St. Louis, Missouri; Savannah and Charleston, in what is know as Atlantic coast line business by steamers; also at Louisville, Kentucky, and with the American Express Company, at Cairo, Illinois; and for business to and from Texas and Mexico we connect at New Orleans, Texarkana, Arkansas, and Denison, Texas, with the Texas Express Company.

Q. 7. Do either the American, the United States, or Adams run to points south of these places you have mentioned in the territory occupied by the Southern?

A. They do not.

Q. 8. Over how many lines of railroad in the South does the Southern Express Company run?

A. About 95.

Q. 9. How many of the important lines of railway in the States you have mentioned are not occupied by the Southern Express Company?

A. The Louisville and Nashville, and a portion of the roads controlled by it, viz.: Its main stem and branches, the South and North Railroad, of Alabama, and the Nashville and Decatur road, and the Elizabethtown and Paducah railroad. All other roads the Southern Express Company conducts an express business thereon.

Q. 10. Did the Southern Express Company ever run over the four roads mentioned in your previous answer?

A. They did.

Q. 11. From what time to what time?

1746 A. As far back as my recollection extends, or when the roads were completed, and until August, 1879.

Q. 12. State why the Southern Express Company left such roads.

A. It did not do so voluntarily, but was forced to discontinue its business on those lines by reason of the railroad officers refusing to accord to us the privilege of continuing our business. Our company desired to continue its business on these lines, and for that purpose made tenders of freight and other matter, with messengers in charge of same, all of which was refused, and in some instances the matter and messengers ejected from the cars.

Q. 13. Was a similar attempt to eject the Southern Express Company made upon any other Southern railway line?

A. Not that I know of.

Q. 14. What lines did you include in your former answer by the phrase "The Louisville and Nashville railroad, and those controlled by it?"

A. The Louisville and Nashville railroad proper, and branches; the South and North Railroad, and the Nashville and Decatur railroad.

Q. 15. Referring to question 13, I ask if a similar attempt to exclude the Southern Express was not commenced upon the Mobile and Montgomery and Nashville, Chattanooga and St. Louis railway?

A. Yes; after the Louisville and Nashville railroad acquired the control of, or authority on, these roads you named our company was served with notices that on and after certain dates the privileges and facilities then enjoyed by our company would be discontinued, and in one or more of the notices referred to it was stated in substance that a contract (I believe the word exclusive was used) had been entered into with the Union Express Company, to conduct the express business.

Q. 16. By the phrase "such notices" you refer, do you not, to the notices set out on pages 25, 26, 27, and 28 of the bill herein?

A. I do.

Q. 17. Do the Southern Express still occupy the Montgomery and Mobile and Nashville and Chattanooga railroad? 1747

A. It does.

Q. 18. Is the Union Express, or any other express than the Southern, now running on these two roads, or either?

A. Not that I am aware of. Up to my last advices our company was conducting the express upon these two lines of railway.

Q. 19. Did the Union Express succeed the Southern on the lines of the Louisville and Nashville railroad?

A. It did.

Q. 20. Did the Union Express also commence to do business over any other; and, if so, what lines of railroads?

A. I am informed that it did do business on the Elizabethtown and Paducah and the Louisville, Cincinnati and Lexington railroad. It sought to obtain privileges on the New Orleans, St. Louis and Chicago railroad.

Q. 21. After the Union Express Company commenced business on the Louisville and Nashville railroad was any attempt made by the Southern Express Company to get such road to give it similar express facilities thereon as were accorded to the Union Express Company?

A. Yes; frequent applications were made by the officers of our company, in writing and verbally, asking that our company might be permitted to conduct its express businss on and over the same lines operated by the Union Express Company, and upon the same terms and conditions as were accorded to the latter company. I represented to President Standiford that, in consequence of our not being permitted to operate the Louisville and Nashville road, our business would be seriously interrupted, and our chain of connection between the West and South thereby broken; and if the railroad company's desire was to have the best obtainable results from the express service, we should be accorded equal privileges, and thereby his road derive a revenue from a class of through business largely controlled by our company, and which otherwise might seek other channels. Our conversations on this subject were frequent;
and, while expressing himself as in every manner fully satis-
1748 fied, not only with the method and system under which our
business on his road had been conducted, but also as to the compensation paid to his company, he said that, an exclusive contract having been made with the Union Express Company, he did not see how he could arrange to have two express companies operating the road, but would be perfectly satisfied with any arrangement which our company might be able to effect with the Union Express Company.

Q. 22. Was an attempt made to effect an arrangement with the Union Express Company?

A. I had several conferences with President Guthrie, of the Union Express Company, looking to the adoption of some plan or means by which mutual interests could be served, without satisfactory results.

Q. 23. Without stating what Mr. Guthrie said or what you said in any conversation, will you state why, as a simple matter of fact, the negotiations came to nothing?

A. Yes; simply because we could not agree as to the amount for which the Southern Express Company could acquire the charter and contracts of the Union Express Company.

Q. 24. Was it understood that if an amicable arrangement could be made it would secure to the Southern Express Company all the contracts which the Union Express Company had with other railroads, if any, which the Southern might desire to run on?

A. Such was my understanding.

Q. 25. Who composed the Union Express Company?

A. B. F. Guthrie was its president and V. Rose its general superintendent, but the names of the board of directors I cannot now call to mind.

Q. 26. Have either Mr. Guthrie or Mr. Rose now, or had they in April last, any ostensible official connection with the express business; if so, what was it?

A. I have seen printed circulars designating Mr. B. F. Guthrie as general manager and Mr. V. Rose as general superintendent of the express business on the Louisville and Nashville railroad.

1749 Q. 27. Have you ever seen any such circular purporting to have been published by the Louisville, Cincinnati and Lexington Railway Company, and also by the Louisville, New Albany and Chicago Railway Co.?

A. I cannot call to mind under what form or manner of publication that Messrs. Guthrie and Rose were designated as general manager and general superintendent, but have a recollection of seeing and reading some such announcement.

(The plaintiff calls upon the defendants to produce the original of a printed notice in these words:

"LOUISVILLE, CINCINNATI AND LEXINGTON RAILWAY CO.,
PRESIDENT'S OFFICE, LOUISVILLE, KY., *May* 15, 1880.

The contract with the Union Express Company having been canceled, this company from this date takes charge of its own express business, with Mr. B. F. Guthrie as general manager, and Mr. Val. Rose, as general superintendent of the L., C. & L. Railway Company's express.

J. B. WILDER, *President.*"

In response, the counsel for the defendant says that the requirement to produce the original of the notice read cannot be now complied with, because the notice to do so being now for the first time given is unreasonable; but to avoid delay and facilitate preparation, admits that the above notice is genuine and issued for the purposes therein stated.)

Q. 28. Was the published notice which you saw purporting to be by the Louisville and Nashville R. R. similar to the notice above set forth?

(Objected to, for the reason that the notice is either in his possession or that of plaintiff's counsel, and its exact terms may thus be shown without resort to comparison.)

If so, can you produce a copy thereof?

A. I think it was in substance the same. I do not know that I have one of the circulars issued by the L. & N. railroad; but if I can find the same I will produce it.

Q. 29. Do you recollect whether you saw a similar notice issued by the Louisville, New Albany and Chicago Railway Company?

(Same objection.)

A. I cannot call to mind having seen similar notice from the L., N. A. and Chicago Railroad Company.

1750 Q. 30. What rate of compensation did the Southern Express Company pay the Louisville and Nashville railroad for express facilities?

A. For that portion of the Louisville and Nashville railway operated by the Southern Express Company, to wit, between Guthrie, Ky., and Memphis, Tenn., the railroad company prescribed a rate of $100 per day, for which it accorded the express company the use of one-third of the baggage car, which space had a carrying capacity of about 5,000 lbs., and a fixed rate per 100 lbs. per 100 miles for all express freight beyond the above capacity, and for the transportation of which extra facilities would be required. On the Nashville and Decatur road, between Nashville and Decatur, Ala., the railroad company fixed the rate of $1,000 per month, and accorded to us the use of one-third of a baggage car. On the south and north road, from Decatur to Montgomery, Ala., $1,000 per month for the use of one-third of a baggage car. On these two latter lines a rate per 100 lbs. per 100 miles was also fixed to be charged for all express matter carried over these lines in excess of the space above mentioned.

Q. 31. What are the lengths of these several roads, by what kind of trains were these baggage cars hauled, and how many trips daily each way did they make, and did the messengers pay fare?

A. The distance from Guthrie to Memphis is 213 miles; from Nashville to Decatur is 122 miles; from Decatur to Montgomery is 183 miles. On the first named there was what is known as double daily passenger train service. On the second named there was a single daily passenger train service, and on the last named also single and daily passenger train service; that is to say, one train each way daily. We also had the privilege of using, without any additional compensation, a train on the Nashville and Decatur R. R., known as an accommodation or mixed train, which ran between Nashville and Columbia, Tenn. We did not pay fare for our messengers, nor were we ever asked to do so.

Q. 32. Is there, to your knowledge, or in case you had made an amicable arrangement with the Union Express Company so to do, would there have been any practical difficulty between your
1751 company and the Union, or between any two express companies desiring to work harmoniously in conducting over the lines of the Louisville and Nashville road, simultaneously, the business of such two, or any two express companies? If so, state fully what such practical difficulty would actually be.

A. Our company has in the past operated the express business on lines of railroad conjointly with another express company, and as the result thereof I cannot see what difficulty or trouble there need be to our company, the Union Express Company, or any other two express companies, in operating the same line of railway.

Q. 33. What is understood by the term "express facilities," as between a railway company and an express?

A. It means transportation by passenger trains, or such means as will give greater expedition than is afforded by the ordinary freight trains. It means, further, and is so generally understood among railroad men' that the express is a character and class of business seeking, quick transportation, generally of a valuable character, oftentimes of a fragile nature, and requires a greater degree of safety and care than it could receive in the ordinary freight trains. It is also regarded as a public convenience in this, that the necessities of people oftentimes require articles for emergencies which may be shipped through the express up to the last moment of the starting of passenger trains, and which would be greatly delayed if subjected to the slower and more circumlocutory methods of freight train business.

Q. 34. Prior to the time when the Louisville and Nashville road gave notice of its exclusive contract with the Union Express Company, had any railway company at the South of any prominence refused the Southern Express Company such facilities as it desired?

A. Not that I know of, except the Virginia and Tennessee Railroad Company, between Lynchburg, Va., and Bristol, Tenn. Our relations with that line were disturbed by reason of our inability to agree with that company as to terms. Subsequently we resumed business relations, and are now operating that line of railway for our business.

1752 Q. 35. For how long a period of time, to your knowledge, has it been the habit, custom, and usage of the railway companies of the United States to afford facilities for the express business?

A. Ever since 1855.

Q. 36. Has it or not been the usage of the express companies during that time to issue through bills of lading or receipts from point of shipment to destination?

A. It has.

Q. 37. Has that been the usage of railway companies, to your knowledge, when the shipment was destined to points beyond the receiving companies' lines; or do such receiving railways usually limit their responsibility to their own lines?

A. My experience as a shipper by railroad has been limited, that is, through the ordinary freight channels, but I have seen bills of lading issued by the initial road for matter destined beyond its termini; and while the destination of the freight was indicated, the receipt or bill of lading also stipulated, in substance, that that road, meaning the one issuing the bill of lading, would be responsible only to the end of its line. The phraseology of these bills of lading has been changed from time to time, as circumstances and experience might suggest. I have recently seen a form of bill of lading in use which stipulates, in substance, that, in the event of loss or damage, any claim therefor should be or must be made upon the railroad company on whose line such loss or damage is shown to have occurred.

(The defendant objects to the witness testifying as to the contents of papers not produced, and as to which the defendant cannot properly or fairly cross-examine in their absence.)

Q. 38. Have you a form of the freight receipt of the Louisville, Lexington and Cincinnati Railway Company, as the same are issued by such company, the defendant in this suit, to the public?

A. I have one that is said to be the form in use by that company. I obtained it within the last forty-eight hours at a railway office on

Broadway near Franklin street; there are several railroad companies represented, among them the Louisiana and Nashville Railroad Company.

1753 Q. 39. Will you produce and insert such bill of lading or receipt in your answer to this question?

A. I will, and hand it herewith.

Overland and Ocean Bill of Lading.

By the Louisville, Cincinnati and Lexington Railway Company and connecting railroad and steamship companies from ——— to ———.

Through bill lading No. ———.

Freight. From ———. To ———. Quantity, ———. Amount, ———.

Shipped, in apparent good order, by ———, the following property, marked and numbered as below (contents of packages unknown, and weight subject to correction.)

Marks, ———. Articles, ———.

To be delivered in like good order and condition unto ——— or to ——— assigns, he or they paying freight, in cash, immediately on landing the goods, without any allowance of credit or discount, at the rate of ——— gross weight, delivered with average accustomed ———, under the following terms and conditions, viz:

That the said Louisville, Cincinnati and Lexington Railway Company, and their connections which received said property, shall not be liable for breakage of packages of eggs, or for rust of iron and of iron articles, or for loss or damage by wet, dirt, fire, or loss of weight, or for condition of bailing on hay, hemp, or cotton, nor for loss or damage of any kind on any article whose bulk requires it to be carried on open cars, nor for damage to perishable property of any kind occasioned by delays from any cause or by changes of weather, nor for loss or damage on any article or property whatever by fire or other casualty while in transit, or while in deposit or places of transshipment, or at depots or landings at all points of delivery, nor for loss or damage by fire, collision, or the dangers of navigation while on seas, rivers, lakes, or canals. All goods or property under this bill of lading will be subject, at its owner's cost, to necessary cooperage or baling, and is to be transported to the depots of the companies or landings of the steamboats or forwarding lines at the points receipted to for delivery.

It is further agreed that said Louisville, Cincinnati and Lexington Railway Company, and their connections, shall not be held accountable for any damage or deficiency in packages after the same shall have been receipted for in good order by consignees or their agents, at or by the next carrier beyond the point to which this bill of lading contracts. Consignees are to pay freight and charges upon the goods or merchandise in lots or parts of lots as they may be delivered to them.

It is further stipulated and agreed that in case of any loss, detriment, or damage done to or sustained by any of the property herein receipted for during such transportation, whereby any legal liability

or responsibility shall or may be incurred, that company
1754 alone shall be held answerable therefor in whose actual custody the same may be at the time of the happening of such loss, detriment, or damage, and the carrier so liable shall have the full benefit of any insurance that may have been effected upon or on account of said goods.

And it is further agreed that the amount of the loss or damage so accruing, so far as it shall fall upon the carriers above described, shall be computed at the value or cost of the said goods or property at the place and time of shipment under this bill of lading.

This contract is executed and accomplished and the liability of the Louisville, Cincinnati and Lexington Railway Company, and their connections, as common carriers thereunder, terminates on the delivery of the goods or property to the steamship company at ——, when the liability of the steamship company commences, and not before.

And it is further agreed that the property shall be transported from the port of —— to the port of —— by the ——, with liberty to ship by any other steamship or steamship line, subject to the following terms and conditions, viz:

To be delivered from the ship's deck, where the ship's responsibility shall cease, in the like good order and condition at the aforesaid port of —— (the acts of God, the Queen's enemies, pirates, robbers, thieves, vermin, barratry of master or mariners, restraints of princes, rulers, or people, loss or damage resulting from insufficiency in strength of packages, sweating, leakage, breakage, stowage, or contract with other goods, risk of craft, explosion, or fire at sea in craft or on shore, before lading or after unlading, accidents from machinery, boilers, steam, or any other accidents of the seas, rivers, and steam navigation of whatever nature or kind soever excepted; whether any one or more of all such exceptions arise, occur, or are in any way occasioned from or by the negligence, default, or error in judgment of the master, mariners, engineers, or others of the crew, or of any of the servants or employees of the shipowners, or otherwise, however); and with liberty during the voyage to call at any port or ports to receive fuel, to load or discharge cargo, or for any other purpose whatever; to sail with or without pilots, to tow and assist vessels in all situations, and in the event of the said steamer putting back to ——, or into any other port, or being otherwise prevented from proceeding in the ordinary course of her voyage, to tranship the goods to any other steamer.

Weight, length, contents, and value unknown, and not answerable for leakage, breakage, rust, or mortality, damage caused by heavy weather or pitching or rolling of the vessel, heating, mold, inherent deterioration, or defective package, or wrong delivery, caused by error, indistinctness, illegibility, or deficiency in the marks, brands, or numbers. Where goods are weighed or measured on board to ascertain freight, the charges for weighing, etc., to be paid by the consignees, and the shipowner to have a lien on the goods for such charge. The consignees, or the parties apply-
1755 ing for the goods, are to see that they get their right marks

and numbers, after the lighterman or wharfinger or the party applying for the goods has signed for the same, the ship is to be discharged from all responsibility for mis-delivery or non-delivery, and from all claims under this bill of lading. The ship is to be entitled to commence discharging immediately she arrives. The goods to be taken from the ship by the consignees directly they come to hand in discharging the ship, otherwise the master or ship's agent to be at liberty to enter and land the goods or put them into craft at the merchant's risk and expense, and to have a lien on such goods until the payment of all costs and charges so incurred. The ship's responsibility to cease immediately the goods are discharged from the ship's deck.

The owners of these steamships will not be accountable for gold, silver, bullion, specie, jewelry, precious stones or metals, statuary or paintings, unless specified in the bills of lading signed therefor, and the value thereof therein expressed.

Parcels for different consignees collected and made up in single packages, addressed to one party, for the purpose of evading payment of parcel freight, will be charged with the proper freight on each parcel.

Notice. In accepting this bill of lading the shipper or agent of the owner of the property carried expressly accepts and agrees to all its stipulations, exceptions, and conditions, whether written or printed.

In witness whereof, the agent signing for the said transportation and steamship companies hath affirmed to ——— bills of lading, of this tenor and date, one of which being accomplished, the others to stand void.

Dated in ———, 18—.

——— ———,

Agent Severally, but not Jointly.

Attention of shippers is called to the act of Congress of 1851: "Any person or persons shipping oil of vitriol, unslaked lime, inflammable matches, gunpowder, in a ship or vessel taking cargo for divers persons, on freight, without delivering at the time of shipment a note, in writing, expressing the nature and character of such merchandise to the master, mate, or officer, or person in charge of the loading of the ship or vessel, shall forfeit to the United States $1,000."

Bonded goods.—Consignee to furnish landing certificates, free of expenses, and, on all shipments of less than five car loads, bonding charges will be collected.

Q. 40. Will you state what was the nature of the express business when you first became familiar therewith, and whether the same now extends to other classes of business than those originally conducted by express companies?

Adjourned to August 31, 1880, at 11 a. m.

1756 NEW YORK, *August* 31, 1880—11 a. m.

Present: Counsel as before.

Examination of the witness, MICHAEL J. O'BRIEN, resumed:

Q. 40. Will you state what was the nature of the express business when you first became familiar therewith, and whether the same now extends to other classes of business than those originally conducted by express companies?

A. The general features of the business when I first became acquainted with it are preserved now, but have in the intervening time been subject to marked improvement. This is especially true of what is known as the collection system, and that feature has become as widely known as it is extensively patronized by the business community. Since my connection with the Southern Express Company it business has been extended to the transportation of fruits, vegetables, and other matter of a perishable character. With approved appliances and a system especially planned and adapted to this traffic, such products are transported by express in perfect condition between distant points. Foreseeing the value of this traffic, and its capacity for development in the South, our company has spared neither labor nor expense to encourage and facilitate its growth. To this end especial facilities have been provided, low and inducing rates adopted, and a system of telegraphic report devised, giving shippers daily information of the condition of markets and prices. Chiefly through the instrumentality of the express, this fruit and vegetable industry has become one of the most important branches of agriculture in the South, and without the advantages and facilities, as well as conveniences and assistance, offered by the express, it is believed that growers would find this particular business less profitable.

Q. 41. You have stated the number of railroads over which the Southern Express conducts its business. Can you give the aggregate mileage of such roads, the average number of daily trips, and any details to show the number of men employed or the value of the matter transported, or of other property?

A. Railroads over which our company does business will
1757 aggregate about $10,000 miles. We employ between 1,200
and 1,500 operators. It would be difficult in the absence of data to state the value of property that has been entrusted to our company for transportion. It varies in quantity and value according to public or commercial necessities. During what is known in the South as the cotton season, our company is intrusted with the carriage of all money, or nearly all, necessary for the movement of that staple. We receive from Adams Express Co. to complete transportation of same from $10,000,000 to $15,000,000 per month between September 1 and June 1 of every year. This amount embraces only regular commercial transactions, and does not include what is known as Government business.

Q. 42. Are such moneys going from points beyond your territory to points within, and embrace transportation between different States?

A. The larger portion of this money traffic originates at and is destined for points beyond the territory of our company, and is what we class as inter-State business.

Q. 43. Can you state the average rate of payment made by the Southern Express Co. for railway facilities, whether by space or by weight?

A. About thirty-three cents per 100 pounds per 100 miles.

Q. 44. Has any railroad company ever claimed to exercise the privilege of inspecting the express matter of your company before receiving it for transportation?

A. Not to my knowledge before this litigation commenced.

Q. 45. Could such a privilege, in view of the long distances covered by your lines and those of the American and Adams, be accorded to consecutive railway officials with safety to the value and property committed to the custody of the express company?

A. Not without great detriment to the carrier as well as the patron. Take, for instance, a package of money from New York destined for New Orleans; if it had to be handled and examined, and contents counted by a railroad or other official on each of the
1758 roads forming this line, the package would necessarily be subjected to great delay. As is often the case in mercantile transactions, or individual cases, remittances are made for specific purposes, such as to meet an obligation maturing at a certain time, and the sender, estimating almost the number of hours necessary for the package to reach its destination, defers its shipment until the last moment; and if it is delayed from any other than unavoidable causes, his credit and standing might thereby be seriously affected.

Q. 46. Does your company ever receive for transportation property which is sealed or locked or nailed or otherwise securely fastened for transportation?

A. Yes; at least three-fourths is in such concealed condition when received.

Q. 47. Does your company ever require the shipper to disclose the contents of such packages, or the nature thereof before receiving the same for transportation?

A. No. With reference to freight, unless the exterior of the package should indicate, or lead us to suppose, that the contents were of an explosive or dangerous character.

Q. 48. Could the express business, or the business of any common carrier, be conducted if it was understood that the carrier could break the seals and locks, or pry open the lids of all closed packages, and inspect their contents when and where he pleased to do so?

(The defendant by counsel objects to the witness answering this question, and to the further prosecution of this line of interrogation, because the matter inquired about is incompetent or irrelevant, as to any matter in dispute between the parties to this suit.)

A. I should think not.

Q. 49. As between an express company and the public, what primarily determines the rate of charge for express services to the public?

A. Our charge to the public for freight business is predicated upon the rate charged us by the railroad company.

Q. 50. Are the general charges of the express companies, so far as you know, for such services just and reasonable?

A. They are.

1759 Q. 51. In determining the rate per $1,000 to be charged to the public for the transportation of money, or its equivalent by express, is the usual rate of exchange between banks and bankers as between prominent points, say in your territory, New Orleans and Memphis considered?

A. The rates of exchange between banks are considered in fixing our rates. Exchange varies; our rates are more fixed. At times the rate of exchange between New Orleans and Memphis is $2.50 per $1,000. Our rate is $1.25 per $1,000.

Q. 52. Have you any general average rate, say for $1,000, for 500 or 1,000 miles?

A. I have never made a calculation as to the average, but will say that it would be about $1 or $1.25.

Q. 53. Has your company made any, and, if so, where, and under what circumstances, any investments of any kind in real estate, or leases thereof, to secure the necessary local facilities for the conduct of its express business?

A. Yes; our company has found it necessary to erect or purchase or lease office and warehouse accommodation at various points on the lines of railroads over which it did business.

Q. 54. In such cases who has sold or leased to the express company such premises?

A. In some instances they have been obtained from private parties, in others from the railroad companies.

Q. 55. When obtained from the railroad companies where, in reference to the railway lines or depots, were such premises situated?

A. On the grounds or right of way of the railroad company.

Q. 56. Have the railway companies in the South ever, and [if] so, how frequently, availed themselves of the services of your company for the transportation of the moneys of the railroad companies?

A. Yes; nearly, if not every, railway company upon whose road we do business, sends and receives by our express remittances daily from their station agents, and the treasurers of these roads make their exchanges of balances with connecting roads through our company.

Adjourned to September 1, 1880, at 11 a. m.

1760 NEW YORK, *September* 1, 1880—11 a. m.

Present: Counsel as before.

Examination of the witness MICHAEL J. O'BRIEN resumed:

Q. 57. You have spoken of the express messenger—what compensation do you pay the railroads for the transportation of such messengers?

A. We do not pay them any compensation for the transportation of express messengers. The rate prescribed by railroad companies for space per 100 lbs. or percentage includes and covers the free transportation of our messengers in charge of express matter, as also his safe and package trunk; also, free transportation for officers of the express company. The railroad companies are paid simply for the carriage of the goods, and the express company assumes all responsibility for matter in its charge, excepting where loss or damage may result from the gross negligence of the railroad company or its servants.

Q. 58. How much have you known to be carried by your company in money at any one time?

A. $10,000,000.

Q. 59. Does your company now, or has it at any time, run over any railroads that were in the possession of receivers?

A. Yes, several.

Q. 60. Assuming a trunk or safe to contain $10,000,000, how would the same be watched or guarded by the express while in transportation?

A. By the messenger directly in charge, accompanied by two or more extra messengers, one of whom would ride in the same compartment or car with the regular messenger, and the other or others would ride in the passenger coaches, with instructions to repair to the express car upon every stoppage of the train. In the case of accident or misconnection the valuables would be conveyed to our nearest office, and there carefully watched by such force as might be necessary for its protection. Every messenger in our service is required to equip himself with fire-arms for protection of himself and property in his charge.

1761 Q. 61. Does it ever happen that a trunk or safe, containing money or valuables, reaches an intermediate point on Saturday night or Sunday morning, and is detained by reason of the fact that the railroad trains do not run on Sunday?

A. Yes.

Q. 62. In such case what is done with such trunk or safe?

A. As per answer to previous question, it is taken to our office, and there placed in the vault, if we have one, and guarded by employés night and day.

Q. 63. Does your company ever receive property for transportation which is to be delivered at points within the British Provinces or in Europe.

A. Yes, frequently. We give receipts for such matter. One of the principal articles of export from the South is cotton; and to our company are entrusted the samples of same destined for all parts of Europe.

Q. 64. Aside from the services which your company rendered for the public, has it any other business or occupation?

A. None.

Q. 65. Please state fully all the services which your company performs or renders for the public, other than the mere transportation of what is known as goods, wares, and merchandise from one railway station to another?

A. In addition to money business, it is extensively employed by banks, merchants, and others in the collection of drafts, notes, bills, checks, coupons, etc., in the conduct of which the greatest caution and care is required. This business is attended with much risk and responsibility, and requires some knowledge of commercial usages, in order that presentation of collectable paper may be made within the proper time, the days of grace to be allowed, seeing that acceptances are properly made, failure or neglect to protest, or making wrongful protests; any errors entail responsibility upon the company, and it has met with considerable loss from such causes. Frequently it is the case that that these collections, protests, etc., are to be made at points remote from the railroad, in which cases we send trustworthy agents to give especial attention to this particular duty

In addition, we transact business largely in what is known as
1762 the C. O. D. business; and in the transaction of this distinct-
ive feature, the express companies become the guarantor between the seller and the buyer. It is immaterial to A. T. Stewart & Co. who John Jones, of Texas, may be, so long as the goods ordered can be sent by a responsible express company, C. O. D., because Stewart & Co. know that the express company is responsible, either for the return of the goods or the amount of their bill. It is often the case that parties South request Tiffany & Co. to send, by express, an assortment of jewelry, or ladies may request of some house, several dress-patterns from which to make selection. These things are sent, and the express company becomes, as it were, the salesman of these houses, allowing the consignee to make a choice of goods, collecting the price of some as per accompanying invoice, and returning the unsold goods, with the money collected, to the consignor. It also serves the public in any other matter which it can do with safety and legality.

Q. 66. Will you state what are the advantages offered to the public by the express companies in addition to the transportation of goods, wares, and merchandise by railway trains?

A. The advantages and conveniences afforded to the public are numerous. In each of the principal cities, as well as many small towns, we provide horses and wagons with which to deliver matter at the places of business or residence of consignees, and receive therefrom any articles desired to be forwarded, and perform the service at any hour, day or night, that may be necessary. Our employés are provided with receipt books, and give receipts at the time of taking these goods from stores or residences. Our business involving the carriage of the most valuable class of matter and responsibility is universally recognized as a special branch of transportation, differing essentially from the work of railroads, steamboats, and stage companies. Its success is attributable in a great degree to a co-operative system, which virtually merges into one line and system the several large and distinctive express organizations. While in some minor details opinions may differ, the plan of management is the
same, because our ideas are acquired from the one school of
1763 practical experience where we are taught that the public in-
terest or patrons must first be considered. The advantages of the express business are found in its systematic method for col-

lecting, distributing, and forwarding business, under harmonious management, from and to all points in the United States and Europe, and in selecting the most expeditious and direct routes. Express companies serve all patrons indiscriminately, and the latter recognize in the old prominent express companies a responsibility aggregating over $30,000,000 to meet and promptly liquidate any loss likely to occur. The express business is an institution of American origin, born of a public want, nursed and fostered by increasing patronage, and has been and is now encouraged by a large majority of prominent railroad companies as a valuable adjunct to their organization, and from which they not only derive considerable revenue, but find in our system an auxiliary for their own and the public benefit, and which, under their own management, they are unable to effect with like satisfaction and advantage.

Q. 67. Will you produce forms of bills of lading purporting to be issued by the New York Central and Hudson River Railroad Company, and the Lake Shore and Michigan Southern Railroad Company?

A. I will, and hand them herewith.

[Form No. 24. 6-19-80.]

NEW YORK CENTRAL AND HUDSON RIVER RAILROAD,
BUFFALO, ERIE ST., ——, 18—.

Received from ——— the following articles (contents unknown) in apparent good order, viz:

Contents of packages unknown. Marks and destination, ———.

Marked and numbered as per margin, which the New York Central and Hudson River Railroad Company agree to carry from ——— to ———, but not to transport them, or any goods, beyond the limit or terminus of their own railroad, upon the following conditions, viz: That the shipper or owner does hereby release the New York Central and Hudson River Railroad Company from liability for leakage of all kinds of liquids, breakage of all kinds of glass, carboys of acids, or articles packed in glass, stoves, and stove furniture, castings, machinery, carriages, furniture, musical instruments of all kinds, packages of eggs, or for damage or loss on
1764 hay, hemp, cotton, or any article the bulk of which renders it necessary to be shipped in open cars; or for damage to perishable property of all kinds, occasioned by delays from any cause or change of weather, or for damages or loss by fire while in the company's depots; and the acceptance of this receipt by the shipper constitutes the agreement for the transportation of the above-described goods or property.

—— ——, *Agent.*

Conditions and Rules Forming Part of the Within Contract.

1. The corporation will not receive or carry any bank bills, drafts, notes, deeds, contracts, evidences of property, or other writings, or be responsible for their loss or injury.

2. No conductor or other agent of the corporation is authorized

to take charge of bank notes, money, or other valuable papers or things for or on account of the company, or to receive any perquisites or reward, for himself or for the company, on or for such articles.

3. No gold or silver coin, bullion, or manufactured articles of gold or silver, jewels, watches, pictures, plated articles, statuary, musical instruments, glass, silks or laces, will be carried by the corporation, for the loss of which it will be responsible, unless with such articles, when delivered, is also delivered a memorandum in writing, stating the character and kind of articles, and their value, unless a proper extra price for the carriage and responsibility for such articles be paid.

Carriages and sleighs, show cases, machinery, stoves and castings, marble, looking glasses, mineral acids, sweet potatoes, all liquids put up in glass or earthen ware, cabinet ware and furniture, will only be taken at the owner's risk of fracture or injury during the course of transportation, and the loading and unloading thereof, unless specially agreed to the contrary.

4. Gunpowder, friction matches, and combustible articles of any description will not be taken on any terms; and, if found secreted or among other goods, they will be forfeited or destroyed; and in case of damage, the shipper or consignor will be held liable therefor.

5. Articles will not be received for transportation unless properly packed in suitable casks, boxes, bales, or packages; and each must be well and clearly marked with the name of the consignee, and of the station where they are to be delivered, otherwise they will not be receipted for, in which case no damages for loss or miscarriage will be paid. The company will in no case be responsible for loss, injury, or damage which might have been avoided by skillful and more careful and sufficient packing, or which occurs without the negligence or fault of the company or its agents. All property is subject to cooperage when necessary.

Goods in bundles will not be considered as properly packed, and the company will not be responsible for any loss of parts or of the
whole of such packages.
1765 No allowance for deficiency of lemons, oranges, or other
fruit, if not covered with canvas, will be made.

6. The corporation will not be responsible for damages occasioned by delays from storms, accidents, or unavoidable causes; or by the decay or injury to fruit, fish, dressed hogs, dressed poultry, or other perishable property; or from injury to property produced by frost, heat, or the elements; and the corporation will not be liable for non-delivery of such property in any certain time, nor in time for any particular market.

The charges on perishable property must always be prepaid.

7. The corporation will not undertake or agree to carry property by any particular train, nor in time for any particular market, nor are they to be responsible for loss or damage arising from any delay or stoppage, however occasioned; but they will forward the same

with as reasonable dispatch as the general business of the corporation will permit.

8. The corporation will only be liable as warehousemen after the property has been placed in their freight depot. But for loss or damage to property by fire, while in their freight depot or storehouse, the company will not be liable.

9. Storage at customary rates will be charged for all property not taken from the warehouse within three days after arrival.

10. The corporation will not be responsible for loss or injury happening or occasioned by unruly or vicious horses, cattle, swine, or sheep, nor for accidents to the same in loading, carrying, or unloading the same; nor for any damage, however caused, to live stock or animals of any description transported or carried upon their railway or in their cars or vehicles.

11. The corporation will not be responsible for the loss or damage to any article by fire or otherwise, the bulk of which renders it necessary to be forwarded in open cars.

12. Goods or property consigned to any one place of the company's line of road, or to any point or place beyond its termini, will be sent forward with as reasonable dispatch as the general business of the corporation, at its warehouse within mentioned, will admit, by a carrier or freight man, when there are such known to the station agent at said warehouse willing to receive the same, unconditionally, for transportation, the company acting, for the purpose of delivery to such carrier or freight man, as the agents of the consignor or consignee, and not as carriers. The company will not be liable or responsible for any loss, damage, or injury to property after the same shall have been sent from said warehouse of the company or tendered to such carrier or freight man for such transportation.

13. No station agent or clerk has authority to alter or vary any of these rules and conditions.

BUFFALO, ——, 188–.

Shipped by —— on the Lake Shore & Michigan Southern railway the following property, in apparent good order (except as
noted), marked and consigned as in the margin, which they
1766 agree to deliver with as reasonable dispatch as their general
business will permit, subject to the conditions mentioned below,
in like good order (the dangers incident to railroad transportation, loss or damage by fire while at depots or stations, loss or damage of combustible articles by fire while in transit, and unavoidable accidents excepted), at —— station, upon the payment of charges. The company further agree to forward the property to the place of destination as per margin, but are not to be held liable on account thereof after the same shall be delivered as above. The company, however, guarantee the through rate of freight as designated below.

CONDITIONS.—The company do not agree to carry the property by any particular train or in time for any particular market. Oils and all other liquids, whether carried in packages or tanks furnished by shippers or by the company, to be at owner's risk of leakage. Liquids in glass or earthen, drugs and medicines in boxes, glass and glassware in boxes, looking-glasses, marble, stoves, stove-plates, and light castings, earthen or queens ware, at owner's risk of breakage. Agricultural implements, cabinet ware, and furniture not boxed, carriages, at owner's risk of breakage or damage by chafing. Oysters, poultry, dressed hogs, fresh meats and provisions of all kinds, trees, shrubbery, fruit, and all perishable property at owner's risk of frost or decay.

☞ It is a part of this agreement that all other carriers transporting the property herein receipted for, as a part of the through line, shall be entitled to the benefit of all the exceptions and conditions above mentioned; and, if a carrier by water, he is to be entitled to the further benefit of exception from loss or damage arising from collision and all other dangers incident to lake and river navigation.

☞ Grindstones and wooden bowls entirely at owner's risk of breakage or chipping.

Via Merchants' Despatch.

BUFFALO, ——, 188–.

Received of —— by the Lake Shore and Michigan Southern railway the following property, in apparent good order (except as noted), marked and consigned as in the margin, which they agree to deliver with as reasonable dispatch as their general business will permit, subject to the conditions mentioned below, in like good order (the dangers incident to railroad transportation, loss or damage by fire while at depots or stations, loss or damage of combustible articles by fire while in transit, and unavoidable accidents excepted), at —— station, upon the payment of charges. The company further agree to forward the property to the place of destination as per margin, but are not to be held liable on account thereof after the same shall be delivered as above. The company, however, guarantee the through rate of freight as designated below.

CONDITIONS.—The company do not agree to carry the property by any particular train or in time for any particular market.
1767 Oils and all other liquids, whether carried in packages or tanks furnished by shippers or by the company, to be at owner's risk of leakage. Liquids in glass or earthen, drugs and medicines in boxes, glass and glassware in boxes, looking-glasses, marble, stoves, stove-plates, and light castings, earthen and queens ware, at owner's risk of breakage. Agricultural implements, cabinet ware, and furniture not boxed, carriages, at owner's risk of breakage or damage by chafing. Oysters, poultry, dressed hogs, fresh meats and provisions of all kinds, trees, shrubbery, fruit, and all perishable property at owner's risk of frost or decay.

☞ It is a part of this agreement that all other carriers transporting the property herein receipted for, as a part of the through line, shall be entitled to the benefit of all the exceptions and conditions above mentioned, and, if a carrier by water, he is to be entitled to the further benefit of exception from loss or damage arising from collision and all other dangers incident to lake and river navigation.

☞ Grindstones and wooden bowls entirely at owner's risk of breakage and chipping.

Via Merchants' Despatch.

Adjourned to September 2, 1880, at 11 a. m.

NEW YORK, *September* 2, 1880—11 a. m.

Present: Counsel, as before.

Cross-examination of the witness MICHAEL J. O'BRIEN:

Cross Q. 68. Where is the principal place of business of the Southern Express Company, and with what other companies does it exchange business and prorate, if any?

A. The principal office is at Augusta, Ga. It interchanges business principally with the Adams Express Company; also, with the American Express Company at Cairo, and the Texas Express Company. With the Adams and Texas it has a system of through waybills. It prorates with the Adams and Texas.

Cross-Q. 69. What are the names of the presidents, if more than one, and boards of directors, of the Southern and Texas Express Companies?

A. Mr. H. B. Plant is the president of the Southern Express Company, and is also president of the Texas Express Company. 1768 The directors of the Texas Express Company are H. B. Plant, Henry J. Levy, C. L. Loop, and myself. The Southern Express Company has no board of directors.

Cross-Q. 70. How are the affairs of the Southern Express Company managed without a board of directors—who are its chief officers, except the president?

A. G. H. Tilley is secretary; M. J. O'Brien its general superintendent; H. C. Fisher, of Memphis, superintendent; F. R. Osborn, of New Orleans, superintendent; W. H. Clayton, Atlanta, Ga., superintendent; H. Dempsey, Augusta, Ga., superintendent; T. D. Gillespie, Columbia, S. C., superintendent, with various assistants, manage the affairs of the company.

Cross-Q. 71. Who determines the policy of the company, the making of contracts, the declaration of dividends in the Southern Express Company?

A. I would recognize only H. B. Plant, president, as authority in determining any of the matters referred to.

Cross-Q. 72. Is the Southern a corporation; if so, under what law? And the same question as to the Texas.

A. I believe they are, and derive their existence under the laws of Georgia and Louisiana.

Cross-Q. 73. Has Mr. Plant similar powers in the Texas as in the Southern Express Company?

A. I think he has.

Cross-Q. 74. Is there any law of the State of Georgia or of the State of Louisiana, or usage, which requires either of said express companies to make reports at stated periods, either to any lawful authority or to stockholders, showing the amount of capital stock paid in, nature, kind, and value of assets, gross and net earnings?

A. I am not aware that there is.

Cross-Q. 75. By what means do stockholders or the public ascertain the financial condition of these companies?

A. I do not know.

Cross-Q. 76. Is or not such information withheld from the public generally by failure to make any statement on this subject to which the public has access?

A. I should consider that the public, not the stockholders
1769 or shareholders, would have little interest in or desire to
acquire such information.

Cross-Q. 77. How would a stockholder get such information?

A. If he were refused it by the company he would doubtless seek some legal means to obtain it.

Cross-Q. 78. Is it the habit of either company, the Southern or Texas, to furnish stockholders with such information by annual reports or otherwise?

A. Not that I am aware of.

Cross-Q. 79. You spoke on yesterday of one money shipment of $10,000,000 by the Southern. Suppose that shipper before intrusting his money to that company had desired to know whether it was responsible therefor or not, by what means could he have done so?

A. By any that might have suggested itself to his mind.

Cross-Q. 80. If he had inquired at the office would he have been informed as to the amount of capital stock paid up in money, assets, earnings, and dividends?

A. If the party from whom the information was sought had been possessed of same, it would doubtless have been imparted.

Cross-Q. 81. Which officer connected with the company could have furnished that information?

A. The president could probably have satisfied the inquiry.

Cross-Q. 82. What amount of capital stock of the Southern Express Company and the Texas Express Company has been subscribed for and paid in in actual money? What is the nature and value of the assets of each, and what the gross and net earnings of each for the last fiscal year, and also what were the dividends on stock for the same period?

A. I have not the information which will enable me to answer.

Cross-Q. 83. Are you a stockholder in either of these companies?

A. Both.

Cross-Q. 84. You are superintendent in the Southern and
1770 member of the board of directors in the Texas, and yet you have
no means of knowing or stating the amount of capital stock
or assets of either?

A. I did not understand your question to ask the amount of capital stock of either.

Cross-Q. 85. I now read cross-question 82 again, in order that you may understand and answer it.

A. You ask what amount of capital stock of these two companies has been subscribed for and paid in actual money. I am unable to say how much was subscribed for and paid in money.

Cross-Q. 86. What is the nature and value of the assets of each?

A. The nature, so far as I am aware, is property, franchises, good will, etc. Their value is represented in the Southern by the number of shares issued, and in the Texas by its capital stock. As to the earnings, I have not the information. As to dividends, can only say as a shareholder I've received none.

Cross-Q. 87. How long since a dividend was paid to shareholders in either company, and what was the last dividend?

A. I have never received a dividend from either company.

Cross-Q. 88. Have stock dividends been declared and awarded to stockholders in either or both companies; if so, when, how often, and in what amount?

A. I have no knowledge of stock dividends having been made by either company.

Cross-Q. 89. Suppose I had an execution against both of the companies for $500,000, could property be found belonging to them, subject to levy and sale under execution, could the same be made by sale of such property. And, if yea—as to the whole or any part of it—tell where it is situated and in what it consists.

A. I do not understand your question, If you had an execution I should think you'd use every effort to find means to satisfy it, and then determine in your own mind, or by advice of counsel, whether it could be levied upon, and if it could take the chances of its realizing the amount of your claim. Real estate, horses and
1771 wagons, and equipments necessary in our business might be found at almost every point at which we do business.

Cross-Q. 90. You spoke awhile ago of having arrangements in behalf of the Texas and Southern with the Adams by which through way-bills were given to and from each company, and the charges prorated; have you no such arrangement with any other express company?

A. None.

Cross-Q. 91. Have you any arrangement for the Texas and Southern by which through receipts or bills of lading are issued by them?

A. The Texas and Southern Express Co's issue to shippers receipts designating the address and destination of the matter.

Cross-Q. 92. In your direct examination, in answer to 66th question, you say the express companies serve all patrons, and the latter recognize in the old prominent express companies a responsibility aggregating over $30,000,000 to meet and promptly liquidate any loss liable to occur; please to state what you mean by prominent express companies, and further, to inform us where this $30,000,000 is situated, giving such details as that a shipper might find it if it became necessary for him to do so.

A. By prominent express companies I mean those which have been in existence for many years, such as the Adams, American, United States, Wells, Fargo & Co., Southern, and others, whose combined capital, as understood in a commercial sense, would aggregate about the sum named. The amounts of each I cannot specifically state, but have no doubt that any one who has good reason for ascertaining could satisfy himself on that point. I can only answer that in a manner which I did—in a commercial sense.

Cross-Q. 93. What do you mean by a commercial sense in this connection?

A. I mean as a merchant or banker would understand what the aggregation of the capital of any number of corporations or firms to imply.

1772 Cross-Q. 94. State all you know as to the amount of capital of each of the companies named by you as prominent express companies.

A. I am not informed as to the amount of the capital or shares of any other than the two companies with which I am identified. The Southern, as I understand it, has 30,000 shares bearing no face value. The Texas has 3,000 shares, each of $100 face value. I have none other.

Cross-Q. 95. Then as to this $30,000,000 of aggregated capital, you know nothing, except the capital of the Southern and Texas?

A. Nothing positive, but, nevertheless, believe my figures are about correct.

(I ask the witness for information, and not for his belief, and object to his stating his belief, and shall ask to have it stricken out.)

Cross-Q. 96. In answers 22 and 23 of your direct examination you spoke of certain conversations, without detailing their substance, with Mr. Guthrie, general manager of the L. & N. Co.'s Express; without asking for those conversations, or the substance of them, I wish to know when and where each of the conversations referred to by you occurred, and who was present.

A. My answer to question 22 of the direct examination stated that I had several conferences with President Guthrie, of the Union Express Co. I have never had any talk with that gentleman since the announcement that he was the general manager of the L. & N. Co.'s Express. The conferences we did have while he was president occurred principally in the city of Louisville, both at the office of the Union Express Co. and at the Galt House. On some of these occasions there were present Mr. H. C. Fisher, a superintendent of our company; Mr. Plant, president of our company; Mr. V. Rose, general superintendent of the Union Express Co.; Mr. Dodd, attorney of the Union Express Co.; and Mr. Danforth.

Cross-Q. 97. At answer 30 you speak of the compensation paid the Louisville and Nashville R. R., giving a detail of the different modes of payment; will you be good enough to say whether that schedule of rates, so to call it, as well as the general terms 1773 and conditions on which you occupied a portion of the lines of that company, were not reduced to writing and signed by the parties?

A. Yes.

Cross-Q. 98. Could the privileges and facilities conceded in your company, as described in said answer 30, be conceded to shippers generally on the same passenger trains with your company?

A. I see no reason why they could not.

Cross-Q. 99. Suppose twenty shippers wanted the same facilities and privileges on the passenger trains, could each of the twenty be assigned one-third of a baggage car, that one-third having a carrying capacity of 5,000 pounds, without seriously impeding the speed of the train?

A. To meet such demand the railroad company would doubtless increase its motive power and rolling stock to accommodate this condition of affairs, and thereby avert any inconvenience or impediment to the train or its speed, and no doubt any railroad company would gladly make such additions if assured of the same revenue from each of these twenty shippers as it obtained from our company.

Cross-Q. 100. Suppose the twenty shippers only needed the facilities on one train, and for a single occasion; what then?

A. That is a question which the good judgment of the superintendent of the road might best determine, but the application or comparison does not bear in this connection, because on two of the roads referred to the compensation was fixed per month.

Cross-Q. 101. Who or what railroad does any two express companies operate conjointly for full express purposes?

A. None in the South at present. While the National Express was in existence it operated on several lines of railway upon which our company also conducted business. Georgia railroad, Wilmington and Manchester railroad, Wilmington and Weldon railroad, Northeastern railroad, of South Carolina, Seaboard and Roanoke railroad, Petersburg and Weldon railroad, Richmond and Petersburg railroad, Atlanta and West Point railroad, and others.

1774 Cross-Q. 102. Who was the president of that National Express Company?

A. I do not know, but was told that General Joseph E. Johnson was its president.

Cross-Q. 103. How long did the National Express Company exist under this conjoint operation?

A. I believe some two years or more.

Cross-Q. 104. Why did it retire?

A. That I do not know.

Cross-Q. 105. Is it or not a fact well known and understood throughout the South, that the said National was bankrupted and driven out of existence by the sharp competition and cutting of rates which the Adams and Southern were able to bring to bear upon it?

A. I have never so understood it. The National Express Company, I was informed, obtained from railroad companies the same rates and facilities which were afforded to our company, and had officers, agents, horses, and wagons at a great many points where our company were similarly represented, and the National had the same physical means and appliances to serve the public as our company possessed. It, the National, had officers in New York and other Eastern cities, which our company did not have, and in this latter respect enjoyed a great advantage over our company. The National Express Company inaugurated a war of rates, to meet which reductions from our tariff we were compelled to abate our own. Further reductions in the rates of the National brought the prices of transportation by its express to such a low figure as to be unremunerative to us, and we preferred to let them have all the business they could obtain at such prices rather than to assume responsibilities at such unremunerative rates. I think and believe that the cause of the dissolution of the National Express Company was attributable more to inexperienced and extravagant administration and accepting unremunerative rates than from any other cause.

Cross-Q. 106. Without regard to any opinion or belief of yours, which was not asked for, and was objected to while you were 1775 expressing it, but nevertheless persisted in, is it or not true that a war about rates ended in the dissolution of the National Express Company?

A. No.

Cross-Q. 107. Did the war about rates continue after the dissolution of the National?

A. There could be no war without two parties to it.

Cross-Q. 108. Did the war last as long as the National lived?

A. The reduction in rates, inaugurated by the National Express Company, continued until our express company could no longer afford to perform express service upon their terms to the public.

Cross-Q. 109. Do you think it prudent or safe in a carrier to receive packages or parcels containing unknown property, and become liable therefor without knowing the contents and without any limitation as to amount of liability expressed in the bill of lading?

A. I think that a prudent carrier would endeavor, to the best of his ability, to limit or fix his responsibility in some legal way.

Cross-Q. 110. You said yesterday that your charges for freights were predicated on the charges against your companies by the railroad companies. Do you mean by that, that you charged your patrons at the same rates that the railroad companies charged you? State fully.

A. No; I do not so mean, but do mean, (as an illustration,) if a railroad company charges us 50 cents per 100 pounds for the transportation of this matter, our charge to the public would be 75 cents. In other words, we generally add 50 per cent. to the cost of transportation.

Cross-Q. 111. Do the railroad companies charge the express companies and the general public the same rates for freights?

A. In some instances the railroad company charges the express company the same rate per 100 pounds for transportation on the passenger trains as the railroad company charges the public for transportation by freight trains.

Cross-Q. 112. As a general rule, do the railroad companies 1776 charge the express companies more or less than the general public? I mean, of course, freights carried by railroads on freight trains.

A. In a few instances the express company is charged more, and in many instances a less rate. This less rate is arrived at by an average of several classes, and is made because the express companies do not classify freights as railroad companies do, and also because the express company assumes responsibility for matter in its custody.

Cross-Q. 113. Previous to the beginning of this litigation, had or not, the Southern and Texas Express Company written contracts in regard to their rights and facilities with the different principal railway companies? If so, state the names of such principal railway companies as with whom such contracts existed.

A. With some it had for instance the Louisville and Nashville railroad, the Iron Mountain railroad, New Orleans, St. Louis and Chicago railroad, Mobile and Ohio railroad, Mississippi and Tennessee, Memphis and Charleston railroad, and others.

Cross-Q. 114. As to this $10,000,000 shipment spoken of by you, how did the carrier ascertain its amount?

A. By declaration of the value at the time of shipment.

Cross-Q. 115. In the written contract spoken of by you, was there not in substance a stipulation "that the railway company was not to carry freight or express matter, or allow a conductor or baggagemaster so to do on any of its passenger trains; and that all such express matter seeking transportation by passenger trains, except the baggage of passengers on the train, shall be considered express matter, and turned over to your agent or messenger"?

A. When any written agreement was made, or verbal arrangement effected, it was understood that the railroad company would not carry on its passenger trains matter for other companies or persons upon any more favorable terms than were accorded to our company, and it was also understood that matter offered for transportation on passenger trains, excepting baggage accompanied by passengers, should be turned over to the express company. This latter arrangement was generally suggested by railroad officers, because, as they alleged, they had no facilities at the passenger trains for manifesting or taking account of such matter, and, therefore, desired our company to give it attention. 1777

Cross-Q. 116. I now repeat cross-question 115 and ask the witness to answer it as put, without the introduction of matter not relating to it; but to say simply whether or not the written contracts contained in words or in substance the stipulations between the quotation marks in the question?

A. In some of the written contracts, yes.

Cross-Q. 117. What railroad companies are doing the express business by their own agents and servants over their own lines?

A. An express business is being operated or conducted on the line of the Louisville and Nashville railroad, the Elizabethtown and Paducah, and, I believe, on the Baltimore and Ohio railroad, but by whose agents and servants I am not informed.

Cross-Q. 118. With what railroad company's expresses does the Southern or Texas Express exchange business, or give through waybills or bills of lading?

A. Our express company receives matter transferred to it by any carrier, and delivers matter to any carrier necessary to complete the transportation, provided the destination of such matter and its delivery cannot be effected by our own agents. We have no through way-billing arrangement with any other than the Adams and Texas Express Company. A shipper offering at one of our offices a package destined, say for Bartlett, Tenn., on the Louisville and Nashville railroad line, would receive one or our usual forms of receipt, which would designate the name of the consignee and destination. This form of receipt is used for all freight business, regardless of whether the destination of the matter receipted for is at a point reached directly by our company or through other carriers. Whether railroad expresses or not.

Cross-Q. 119. Will you be good enough to file, as a part of your answer to this question, copies of receipts and way-bills, such as are used by your company in each of the different branches of its business?

1778 A. Yes; I will send to our nearest office and obtain same and hand them to the commissioner.

[Form 14. Domestic Bill of Lading.]

SOUTHERN EXPRESS COMPANY, Express Forwarders.

$———. RICHMOND, VA., ———, 187

Received from ———, sealed and said to contain ———, addressed ———, ———.

Upon the special acceptance and agreement that this company is to forward the same to its agent nearest or most convenient to destination only, and there to deliver the same to other parties to complete the transportation—such delivery to terminate all liability of this company for such package; and also, that this company are not to be liable in any manner, or to any extent, for any loss, damage, or detention of such package, or of its contents, or of any portion thereof, occasioned by the acts of God, or by any person or persons acting or claiming to act in any military or other capacity in hostility to the Government of the United States, or occasioned by civil or military authority, or by the acts of any armed or other mob or riotous assemblage, piracy, or the dangers incident to a time of war, nor when occasioned by the dangers of railroad transportation, or ocean or river navigation, or by fire or steam, unless specially insured by this company, and so specified in this receipt. In no event is this company to be liable for a greater sum than that above mentioned, nor shall it be liable for any such loss unless the claim therefor shall be made in writing, at this office, within thirty days from this date, in a statement to which this receipt shall be annexed (and the shipper and owner hereby severally agree that all the stipulations and conditions in this receipt contained shall extend to, and inure to the benefit of, each and every company, or person, to whom the Southern Express Company may intrust or deliver the above described property for transportation, and shall define and limit the liability therefor of such other company or person). For the company,

Freight, ———. ———.

Insured by Southern Express Company, for ———, to ——— only, except against loss occasioned by the public enemy.

For the company,

Insurance, $———. ———.

[Form 15. Read this Receipt.]

SOUTHERN EXPRESS COMPANY, Express Forwarders.

Domestic Bill of Lading.

RICHMOND, VA., ———, 188

Received of ———, ———, valued at ——— dollars, and for which amount the charges are made by said company, marked ———, ———.

1779 Which it is mutually agreed to be forwarded to our agency nearest or most convenient to destination only, and there delivered to other parties to complete the transportation.

It is part of the consideration of this contract, and it is agreed, that the said express company are forwarders only, and are not to be held liable or responsible for any loss or damage to said property while being conveyed by the carriers to whom the same may be by said express company intrusted, or arising from the dangers of railroads, ocean or river navigation, steam, fire in store, depot, or in transit, leakage, breakage, or from any cause whatever, unless, in every case, the same be proved to have occurred from the fraud or gross negligence of said express company, or their servants, unless specially insured by it and so specified on this receipt, which insurance shall constitute the limit of the liability of the Southern Express Company in any event; and, if the value of the property above described is not stated by the shipper at the time of shipment, and specified in this receipt, the holder hereof will not demand of the Southern Express Company a sum exceeding fifty dollars for the loss of, or damage to each package herein receipted for. Nor shall the said company be held responsible for the safety of said property after its arrival at its place of destination.

And if the same is intrusted or delivered to any other express company or agent (which said Southern Express Company are hereby authorized to do) such company or person so selected shall be regarded exclusively as the agent of the shipper or owner, and, as such, alone liable, and the Southern Express Company shall not be, in any event, responsible for the negligence or non-performance of any such company or person; and the shipper and owner hereby severally agree that all the stipulations and conditions in this receipt contained shall extend to, and inure to the benefit of, each and every company, or person, to whom the Southern Express Company may intrust or deliver the above-described property for transportation, and shall define and limit the liability therefor of such other company or person. In no event shall the Southern Express Company be liable for any loss or damage, unless the claim therefor shall be presented to them in writing at this office, within thirty days after this date, in a statement to which this receipt shall be annexed. All articles of glass, or contained in glass, or any of a fragile nature, will be taken at shipper's risk only, and the shipper agrees that the company shall not be held responsible for any injury by breakage or otherwise, nor for damage to goods not properly packed and secured for transportation. It is further agreed that said company shall not, in any event, be liable for any loss, damage, or detention caused by the acts of God, civil or military authority, or by insurrection or riot, or the dangers incident to a time of war.

For the Company,

——— ———.

Charge value on ———.
Freight, ———.

1780 SOUTHERN EXPRESS COMPANY

Hereby guarantee the safe arrival of the articles named in this receipt (seizure or stoppage by civil or military force excepted), at ——— ———, and in case of failure, or damage by fire, water, or the perils of navigation or transportation to pay to ——— or assigns the sum of ——— dollars, or in proportion thereto, as the amount of damages sustained bears to the value stated above. The same to be determined by three disinterested appraisers, if the parties cannot otherwise agree; it being understood that this guarantee shall not extend beyond twelve hours after the arrival of the goods at the above-named office or station.

——— ———, *Agent.*

Cross-Q. 120. Suppose, in the ordinary course of business, it should receive a package of $5,000 at Decatur, Ala., intended for Louisville, Ky., and your company undertook to send it by the usual and ordinary routes used by it in transacting such business, over what line of railway would it pass in reaching Louisville, Ky.?

A. In the case and location cited, if such a package were offered, we would inform the shipper that the only line to Louisville, Ky., operated by our company was via Chattanooga, from which point it would be sent via Cincinnati Southern railroad, and by that route we would send it.

Cross-Q. 121. What would be done with a like package if received at Montgomery, Ala.—what route would it take?

A. It would be sent via Atlanta and Chattanooga.

Cross-Q. 122. Would that be the shortest express route to Louisville?

A. Without a railway guide to inform as to the distances between Montgomery and Louisville, I cannot answer.

Redirect:

R. D. 123. In arranging the details for the conduct of the express business over a line of railway, by what officer of the express company would the negotiations be conducted?

A. Either the president or general superintendent; and sometimes that authority would be delegated to one of the division superintendents.

R. D. 124. If, while an express company was transacting
1781 an express through and local business over a line of railway,
the railway should commence itself to do a similar business on the same line of railway, would that fact affect the question of what it would be just and reasonable for the express company to

continue to pay for express facilities over such road; and, if so, to what extent?

A. I do not think that the fact of the railway company commencing to do its own express business on the line previously held and operated by an express company should affect the payments or rates of the latter. If the rates charged the express company by said railroad company before the latter inaugurated an express business for its own account were then considered just and reasonable, I do not see why they should be increased, unless the express company sought and obtained additional facilities and privileges.

R. D. 125. If the effect of the inauguration, in the given case, by the railroad company, of its own system of express business, should be to reduce the volume of express business done by the express company over such road, would it be just and reasonable for the railroad company thereafter to demand an increase of compensation from the express company for a continuance of the old facilities, either upon space accorded or weight carried?

A. It certainly would not, in my opinion, be right or just to demand or expect increased compensation, either for the space originally provided or in the rate per hundred pounds, because the business would then be divided between two carriers, and abatements should properly be made in the price for this space, in proportion to the diminished or divided business. And in the case where the rate was per one hundred pounds the rate certainly should not be increased.

MICHAEL J. O'BRIEN.

Sworn to before me—

JOSEPH GUTMAN, Jr.,
Commissioner.

Henry Stephen Haines, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing
1782 but the truth, in the matter of controversy herein, and being examined by Mr. **Seward**, counsel for complainants, deposes and says, as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Henry S. Haines; I am forty-three years of age; my residence is at Savannah, Ga.; by profession I am a civil engineer.

Q. 2. Have you had any, and, if so, what, official or practical connection with railways and their management, and are you acquainted with the details of the expenditures connected therewith?

A. I have been employed upon railroads for twenty-seven years as civil engineer and construction, as a machinist and locomotive runner, and as superintendent. Since the time that I have been superintendent it has been my duty to examine into the detail cost of operation.

Q. 3. Can you state the average reported or estimated cost of transportation of goods, wares, and merchandise by ordinary freight trains, giving for illustration the highest and the lowest limit thereof?

A. On railroads in the United States it varies from two cents to five-tenths of a cent per ton per mile.

Q. 4. In estimating such cost are the general expenses of the road included, or is such estimate confined to wear and tear and actual cost of hauling?

A. The figures which I have stated include a portion of the general expenses of the road, the remainder of the general expenses of the road being assigned to the cost of passenger transportation.

Q. 5. Please assume a railroad answering in every respect all that is implied in the phrase "first-class road," daily running between its termini a passenger train, including a baggage car, and the hauling in that baggage car of from two to four tons of goods, wares, and merchandise of ordinary description, how much more would it cost such railroad company to haul such matter in such baggage car than it would cost to haul the identical matter in an ordinary freight car on a freight train?

1783 A. If the additional freight overloaded neither the car nor the train it would cost no more.

Q. 6. If the railway company habitually carried that amount of such matter in a baggage car would that fact afford or not afford evidence that neither the car nor the train were overloaded in the estimation of that company?

A. The management of a first-class road would not habitually overload either the baggage car or the passenger train.

(Defendant excepts to the whole deposition, as incompetent and irrelevant.)

H. S. HAINES.

Sworn to before me—

JOSEPH GUTMAN, Jr.,
Commissioner.

Adjourned, by consent, to September 13, 1880, at 12 m., at Cincinnati.

1874 Deposition of M. J. O'Brien, who, being duly sworn, deposed as follows:

Examination by F. E. Whitfield:

Q. Mr. O'Brien, were you in Louisville some time in November, 1879; if so, for what purpose, and state whether or not, while you were there, you had any conference with the officials of the Louisville and Nashville Railroad Company, or of the Union Express Company?

A. I was in Louisville in November, 1879—I think it was on the 27th, Thanksgiving day. While there I had a conference with Dr. Standiford, president of the Louisville and Nashville Railway Company, regarding express business. Our interview was quite prolonged. In it I sought to regain for the Southern Express Company the privilege of resuming its business on the Louisville and Nashville railroad. He stated that a contract existed with the Union Express Company, in which the Louisville and Nashville Railroad Company held an interest; that he had no cause whatever to complain of the manner in which the business had been conducted by our company on his lines, nor of the revenue derived therefrom; that he would be perfectly willing to see our company reinstated on his road, but that any arrangements to that end would necessarily have to be made with Mr. Guthrie. I subsequently saw Mr. Guthrie, when the subject-matter of express business was fully discussed. I am not certain but that Mr. Dodd was present—at all events if not on that occasion, at another time when Mr. Dodd was present reference was made to the capital stock of the Union Express Company, and an offer was made by Mr. Guthrie to me of some of the shares. I told him that I did not want any on individual account, 1785 but that if I did take any I would want a majority or none at all. His response to that was, that it was a question to be considered.

Q. Well, did you have any further interview with Mr. Guthrie when Mr. Plant, president of the Southern Express Company, was present; and, if so, what transpired?

A. In response to an invitation—a written invitation—from Mr. Guthrie, President Plant and self went to Louisville some time in January, I think, of this year; we arrived at the Galt House, and on the morning of our arrival I met Mr. Guthrie, and at his invitation, President Plant and self went to the office of the Union Express Company. There we met Mr. Guthrie and Mr. Dodd, Mr. Danforth, Mr. Smith, Mr. Rose—there may have been others but I can not call them to mind—and Mr. Fisher. The conversation had between Mr. Plant and myself and those gentlemen assumed a general character. Mr. Guthrie introduced Mr. Plant and self to such of these gentlemen as we did not know, and stated, if not in words in substance, "there is now a majority of our board present, and we can proceed to business." The conversation then assumed a general character, and, I believing that no business arrangement could be concluded with so many present, suggested to Mr. Guthrie that fact, and further that he and Mr. Dodd should meet Mr. Plant later in the day at the Galt House, where they could talk freely, and, if any satisfactory conclusions were reached, the matter could then be submitted to his board, if necessary. This suggestion was assented to, and in the afternoon of that day Mr. Guthrie and Mr. Dodd called at Mr. Plant's room, where I was present. Various matters were discussed pertaining to express business, and it resulted in Mr. Guthrie asking what we wanted. Either Mr. Plant or myself—I have forgotten which—asked Mr. Guthrie to name a price at which the Southern Express Company could acquire the charter and contract of the Union Express Company. I remember that I further asked if terms can be agreed upon, "what guarantee have we that the Louisville and Nashville Railroad Company would assent to the arrangement?" Mr. Guthrie said in reply, in substance, that unless

it did assent there can be no agreement; and he would un-
1786 dertake to see that it was ratified by the Louisville and Nashville R. R. I remember that feature particularly, because I asked the gentleman what were the terms of the contract. They said they paid a percentage upon the freight business and the money business. I remarked that in my experience as an expressman I was satisfied that no express company could assume all the responsibility for the conducting of the money business, and give any portion of the revenue therefrom to the railroad company, and Mr. Guthrie agreed with me in that particular, and said that that feature had already been discussed, and if the arrangement was made he thought he could have the money feature eliminated from the contract. Mr. Guthrie and Mr. Dodd then retired from the room, and in the course of five or ten minutes returned and said: "Whatever may transpire now, gentlemen, with reference to what we have to say, we desire it should be considered as sacred." They then named a figure, the amount of which was so much in excess of our estimate of the value of the property that we made no reply whatever, but invited the gentlemen to call again the following morning. They did so, and I remarked that the figures were greatly in excess of our estimate, but it was due them that we should make a counter proposition, and that, while we would regard their injunction with reference to the amount named the preceding evening, we had no desire whatever that secrecy should attach to the proposition we would make. I then stated our willingness to give them an advance of $50,000 over and above the full amount of capital paid up; in other words, if their capital was $100,000 paid up, we would give them $150,000 for their charter, their contracts, and their property. I cannot recall to mind exactly the response of these gentlemen, but in substance they thought that they had named a very low sum, because either they or some one interested with them considered it worth a million. This is, in substance, what transpired at the two last meetings referred to. Mr. Plant and myself took our departure that day from the city.

Q. You spoke of "our company" and "my company." What company do you mean?

A. The Southern Express Company.

1787 Q. Do you know of the receipt by Mr. Plant of letters as follows, to wit:

"UNION EXPRESS COMPANY, OFFICE OF THE PRESIDENT,
LOUISVILLE, KY., *November* 28, 1879.

H. B. PLANT, Esq.,
President Southern Express Company, New Orleans, La.

DEAR SIR: I learned through Mr. O'Brien yesterday that during your trip South you would in all probability visit New Orleans. In this event, could you not arrange to return East via Louisville, and make it convenient to stop over en route and spend the day with us, if possible? I should be much pleased to have you do so.

Very truly yours, B. F. GUTHRIE, *President*."

And also:

"UNION EXPRESS COMPANY, OFFICE OF THE PRESIDENT,
LOUISVILLE, KY., *December* 6, 1879.

H. B. PLANT, Esq.,
President Southern Express Company, Savannah, Ga.

DEAR SIR: I have your favor of the 2d inst., from New Orleans, and regret exceedingly to learn of your inability to visit Louisville just at this time. Still, I trust you will be able to come before long, for, aside from the pleasure that your visit would afford me, I think that Louisville would be the most suitable place for our interview. However, should you find it impossible to come, I shall be pleased to meet you at any other time and place that may be most convenient.

Very respectfully yours, B. F. GUTHRIE, *President.*"

Also:

"UNION EXPRESS COMPANY, OFFICE OF THE PRESIDENT,
LOUISVILLE, KY., *January* 21, 1880.

Mr. H. B. PLANT,
President Southern Express Company, New York.

DEAR SIR: I learn from your Mr. Fisher that you will visit Atlanta, Ga., via Cincinnati, at an early date. As you will probably pass through Louisville, I will be pleased to have you stop and pass a few days with us. I have been anticipating the pleasure of seeing you in New York this month, but so far official and private business has been so pressing I have been unable to leave here.

Very truly yours, B. F. GUTHRIE, *President.*"

A. Yes.

Q. Will you look at these, and say whether they are the letters received?

1788 A. They are.

Q. Do you know the handwriting in which these letters are written and signed?

A. I am familiar with the handwriting, the body of the letter; I believe it to be that of Mr. Howard, who was connected with the Union Express Company, and was formerly, for several years, in my service.

Q. What connection did he have with the Union Express Company at that time?

A. I do not know, except that he was in the office writing letters for Mr. Guthrie. As to the signature, I am not positive; but they are similar to letters I have acknowledged from Mr. Guthrie. The letters of November 28th and December 6th I believe to be in the handwriting of Mr. Howard; I do not know the handwriting in the body of the letter of January 21st.

Q. What do you state about the signatures?

A. They are similar to letters which I have received purporting to emanate from B. F. Guthrie, president.

Q. You have had correspondence with Mr. Guthrie?

A. I have; I believe that to be his signature.

Q. You think you know it?

A. I believe this to be his signature.

Q. Have you any knowledge of what per cent. of its gross earnings an express company expends for the payment of expenses other than the payments to railroads for railroad facilities?

(Defendant's counsel objects to the question and any answer that may be made to it, for the reason that this witness has been upon the stand before, and plaintiff has heretofore announced itself as through in chief, and this is testimony, if at all, in chief.)

A. About forty-five to fifty per cent.

Q. Are you familiar with the railroad business as conducted in the United States?

A. Some portions of it.

(Defendant's counsel interposed same objection.)

1789 Q. Do you know whether it is a matter of fact that the railroad companies make collections and personal delivery of ordinary freights?

A. None that I am aware of.

(Defendant's counsel interposed same objection.)

Cross-examination by Mr. Dodd:

Q. Have you not given your deposition-in-chief, in this action, in the city of New York, in the month of August?

A. My testimony was taken in New York; yes, sir.

Q. In that deposition were not you inquired of by plaintiff's counsel as to the substance of that interview with Mr. Guthrie at Louisville?

A. Reference was made to it.

Q. In your previous examination you undertook to detail the conversation with Mr. Guthrie at Louisville, did you not?

A. I narrated it, as far as my memory then served me, what transpired at one or more interviews.

Q. Have you refreshed your memory since that time so as to enlarge or diminish your recollections?

A. No, sir.

Q. Then your repetition this morning is substantially the same as that previously given?

A. I could not answer that question unless I read the other testimony. In some respects it is the same.

Q. Do you not remember what you testified to in New York on that subject?

A. Partially.

Q. Only partially?

A. In substance the interview had between Mr. Plant, Mr. Guthrie, Mr. Dodd, and myself, at the Galt House.

Q. You recollect what you testified to then substantially to be the same as that given this morning?

A. Yes; sir.

Q. You say you were in Louisville in November, 1879, on Thanksgiving Day?

A. Yes.

Q. And you met Mr. Guthrie, president of the Union Express Co., on that day?

1790 A. I think I did—that day or the next; I will not be positive.

Q. You said that Mr. Guthrie offered to sell you some shares in the Union Express Co. on that visit?

A. On that or some other visit.

Q. I would like for you to locate that visit—the time and place.

A. I cannot, in the absence of dates; but I know you were present.

Q. Do you say Mr. Dodd was present when such offer was made?

A. I do, emphatically.

Q. Where was that?

A. In the office of the Union Express Co.

Q. Up stairs or down stairs?

A. Up stairs.

Q. What room?

A. Either the front or back room, I do not remember which.

Q. Who else was present?

A. No one.

Q. What led to any such interview, Mr. O'Brien?

A. The general conversation in which you participated—the advantages and the disadvantages that might result from the continuance of our inability to agree as to interchange of business, etc.; and when the offer was made me by Mr. Guthrie, and I responded by saying if I took any I wanted a majority, I endeavored to convey to the minds of you gentlemen that the minor percentage of interest in our company held by you gentlemen, and the balance controlled by us, I thought I could make that minor interest worth more to you than if you controlled it all under the then existing state of affairs.

Q. You say Mr. Dodd heard that interview?

A. I am pretty well satisfied that Mr. Dodd did. I remember it was in the afternoon.

Q. Do you say positively that Mr. Dodd did hear any such interview as that?

A. I do.

1791 Q. You have no doubt about it?

A. I have no doubt in my mind that Mr. Dodd did hear it.

Q. You say, also, and produce evidence and attach copies of letters by Mr. Guthrie to Mr. Plant, embracing an invitation to Mr. Plant to visit Louisville. Was not that first letter written at your solicitation?

A. It may have been, and growing out of a conversation looking to some arrangements for mutual interest; I suggested to Mr. Guthrie that, as he was president of the Union Express Co., I thought it would be right and proper for him to confer in person with Mr

Plant, as president of the Southern Express Co., and that I thought further if he would write and invite Mr. Plant the latter would respond.

Q. Do you not know that you made such a request of Mr. Guthrie?

A. I may have in just the terms I have stated.

Q. Well, in those terms, did you not make the statement?

A. In substance as I have stated, yes.

Q. Did not the conversation between you and Mr. Guthrie on this subject originate out of the conversation in which he, as president of the Union Express Company, complained to you, as representative of the Southern Express Company, that the Southern Express Company was carrying matter around, and not by its direct mode of conveyance to the nearest point; was it not at the close of that interview that you suggested that if he would write a letter to Mr. Plant to come you thought he would come; that it might be to the interest of both companies he should come?

A. I could not have suggested to Mr. Guthrie to write Mr. Plant to come out to Louisville to arrange about matter being sent by circuitous routes, for the reason that that was a question of detail in the business which I had full authority to regulate.

Q. Did not Mr. Guthrie make such complaint to you repeatedly by letter and verbally?

The Witness: What complaint?

Counsel: The complaint that the Southern Express Company, of which you are and were the representative, was carrying
1792 express matter around by circuitous routes, not carrying it by direct routes.

A. Mr. Guthie so alleged on two or three occasions.

Q. Did you not decline to make a correction of the abuses complained of?

A. My response to Mr. Guthrie was that we wished to serve the patrons of our company to the best of our ability; we had heard no complaint from them as to any delay, and whenever any came to my notice I would endeavor to rectify them. Further, I then and there agreed with him and Mr. Rose for the interchange of certain business at Milan and Humboldt.

Q. The business which you agreed to interchange was simply perishable matter, was it not?

A. Yes, sir.

Q. Such matter as would not bear transportation by circuitous routes?

A. Such matter as needed the greatest expedition.

Q. Which could only be received by it and turned over to the Union Express Company at those points?

A. That I do not admit.

Q. You say at the interview at the Galt House, between Mr. Plant and Mr. Guthrie, that a request was made, or a demand made, that the conversation should be sacred. Was it not stated by Mr. Guthrie to Mr. Plant that he would not hold any conversation with him on the subject under discussion unless he (Mr. Plant) would agree that the conversation should not be repeated outside of that room, or used outside of that room?

A. My recollection of it is that after Mr. Guthrie and Mr. Dodd had retired from the conference and subsequently returned, Mr. Guthrie stated, in substance, that he did not desire that any reference should be made to any proposition or figures that should be named; that is my recollection.

Q. Did you and Mr. Plant not assent to the proposition as made by him?

A. We did; as far as the figures were concerned I did.

Q. Did not Mr. Plant?

A. That I do not know.

1793 Q. Were not you present?

A. I was, but I do not remember whether he said so or not; at all events, I think he regarded it as I did as to figures.

Q. Did Mr. Guthrie say anything about figures in that conversation about the secresy or confidential conversation as to figures?

A. Well, I cannot call to mind that he used the word "figures," but that was the construction I placed upon it—in other words, that he did not want the outside public to know the price he had named for his property; while, on the contrary, we did not care so far as our proposition was concerned.

Redirect examination by Mr. Seward:

Q. You have been asked in reference to your deposition in New York. Do you recollect that at New York you were asked two questions in substance as follows: First, "Was there a negotiation between the Southern Express Company, or any of its officers, and the Union Express Company, or any of its officers, touching the sale or purchase by the Southern Express Company, or any other express company, of the Union Express Company charter and contracts?"

A. I do remember that question.

Q. Do you also recollect that you were asked, secondly, as follows: "Without going into the particulars or detailing any of the conversation that passed between the parties, state what was the result of such negotiation." Do you recollect that you answered that, in substance, that it failed?

A. I do.

Q. Do you recollect that you were asked, in substance, thirdly "Why did it fail?

A. I do.

Q. And that you answered, in substance, "Because the price asked was deemed too high"?

A. My answer, in substance, was, "Because of our inability to agree upon the sum that would acquire to the Southern Express Company, the charter, contract, and property of the Union Express Company."

Q. Were you asked in New York, or did you undertake
1794 in your deposition in New York, beyond the three questions
and the answers above set forth, to state anything as to any

details of any conversation between yourself or Mr. Plant and Mr. Guthrie or Mr. Dodd, or any one representing the Union Express Company?

A. I do not remember to have made any such answers.

Recross-examination:

Q. Did Mr. Guthrie or Mr. Dodd or any person say to your or Mr. Plant that the charter of the Union Express Company was assignable or could be sold?

A. They did not say so in so many words.

Q. Did they say so, without any words, by intimation, or direction, or indirection?

A. There was but one construction to be placed upon it, and that was, they would not have named a price for a property that was not assignable.

Q. Did those gentlemen name any price for the charter?

A. Yes, sir; the word charter was used.

(Signature waived.)

Deposition of E. R. **Bryant**, who, being duly sworn and examined, deposed as follows:

Examination by Mr. F. E. **Whitfield**:

Q. State your name, age, occupation, and residence.

A. Edward R. Bryant; age, 41; agent of the Adams Express Company at Terre Haute.

Q. Did you have any conversation with L. A. Fuller, superintendent of the Pacific Express Company, in which he told you the compensation that his company paid the railroads; and, if so, what did he state?

(Objected to by defendant's counsel, as incompetent and irrelevant.)

A. He stated that under the contracts his company had, they paid the railroad companies forty per cent. of the gross earnings, retaining sixty per cent. for their expenses.

(Objected to by defendant's counsel, as incompetent and hearsay.)

1795 Deposition of L. C. **Weir**, who was recalled and examined by F. E. **Whitfield**:

Q. State your name, and whether you are the same gentleman who has testified in this case before.

A. I am.

Q. State whether or not there is a map which shows the principal express routes in the United States and Canada; and, if you have such a map, produce it, or a copy of it, and incorporate it in your testimony.

A. I can and will.

(The witness produced the map.)

Q. Whose map is it?

A. It is "Colton's Map," with all the express lines in the United States marked in distinctive colors.

Q. Now, I want you to state if you know anything about the Pacific Express; and, if so, about its organization.

A. I know that it is chartered under the laws of Nebraska, and I have sent for a copy of the charter, which will be here on Monday next, which I will append to this deposition.

Q. About what per cent. of the gross earnings of an express company is paid for services and expenses, other than what is paid railroads for the facilities they afford?

A. From 45 to 55 per cent. The average is about 50 per cent.

Q. In regard to that settlement with the Louisville and Nashville R. R. Co., was there anything said about a telegraphic dispatch; and, if so, what was it, and who sent it?

A. During the negotiations of the Louisville and Nashville R. R. Co. for the settlement of the differences between us there appeared in the Associated Press dispatches a dispatch, dated at Louisville, which stated that negotiations were pending between the Adams Express Co. and the Louisville and Nashville R. R. Co., and intimating that fraud had been perpetrated by the Adams Express Co., and it was that fraud which was being settled. It was based on an article which was published the day previous in the Courier-Journal. At our interview next after the publication of this Associated Press dispatch, and this article in the Courier-Journal, Mr.
1796 Gaither introduced the subject to say that if that was prompted
by the officers of the railroad company, or if they considered that they were settling with us a "fraudulent claim," we wanted to drop negotiations then and there. Mr. Newcomb and Mr. Guthrie —both of them—protested in the strongest terms that they knew nothing of the publication; that they were not instrumental in having it published, and that they had not thought anything of that sort, but simply considered it a matter of business difference. We then took up the consideration of the settlement with them for the money withheld for freight and money earnings and the consideration of our claim.

(The defendant's counsel objected to the foregoing question and answer, as irrelevant.)

Cross-examination by Mr. Barnett:

Q. Have you given your deposition before in this case in chief?

A. I gave my deposition before Mr. Barnett; whether it was in chief or not—yes, I think it was in chief.

Q. Were you questioned about the settlement of what you called this "business difference?"

A. I was.

(Defendant's counsel gives notice that he shall move to strike out the whole of this witness' testimony on the present occasion.)

H. R. PROBASCO,
Commissioner.

1797 UNITED STATES OF AMERICA,
Eastern District of Missouri, } *ss:*

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the foregoing volumes 1, 2, 3, 4, 5, 6 to be a true transcript of the record and proofs in case No. 1667, of The Southern Express Company, complainant, against The St. Louis, Iron Mountain and Southern Railway Company, defendant, as fully as the same remain on file and of record in said case in my office.

In witness whereof, I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said district, this 30th day of August, in the year of our Lord eighteen hundred and eighty-two.

[SEAL.]

M. M. PRICE,
Clerk of said Court.
By A. P. SELBY,
Deputy.

1798 No. 1667. United States circuit court, eastern district of Missouri. Southern Express Company againt St. Louis, Iron Mountain and Southern Railway Company. Duly certified transcript in the above-entitled cause.

Endorsed on cover: E. Missouri C. C. U. S. No. 260. The St. Louis, Iron Mountain and Southern Railway Company, appellant, *vs.* The Southern Express Company. Filed 11th September, 1882.